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THE  
PENAL CODE  
OF  
CALIFORNIA.

ENACTED IN 1872;  
AS AMENDED UP TO AND INCLUDING 1905, WITH STATUTORY  
HISTORY AND CITATION DIGEST UP TO AND IN-  
CLUDING VOLUME 147, CALIFORNIA  
REPORTS.



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# CONSTITUTIONAL PROVISIONS.

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**Art. I, § 1.** All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

**Art. I, § 4.** . . . No person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief.

**Art. I, § 5.** The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

See Const. U. S., art. I, sec. 9, subd. 2.

**Art. I, § 6.** All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor confined in any room where criminals are actually imprisoned.

**Art. I, § 7.** The right of trial by jury shall be secured to all, and remain inviolate. . . . A trial by jury may be waived in all criminal cases not amounting to felony, by consent of both parties, expressed in open court.

**Art. I, § 8.** Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. A grand jury shall

be drawn and summoned at least once a year in each county.

**Art. I, § 9.** . . . In all criminal prosecutions for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. Indictments found, or information laid, for publications in newspapers, shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

**Art. I, § 13.** In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law. The legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses, in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend at the trial.

**Art. I, § 16.** No bill of attainder, ex post facto law, or law impairing the obligations of contracts, shall ever be passed.

**Art. I, § 20.** Treason against the state shall consist only in levying war against it, adhering to its enemies or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open court.



**Art. II, § 1.** . . . No person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, . . . shall ever exercise the privilege of an elector in this state.

**Art. IV, § 17.** The assembly shall have the sole power of impeachment, and all impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members elected.

**Art. IV, § 18.** The governor, lieutenant-governor, secretary of state, controller, treasurer, attorney-general, surveyor-general, chief justice and associate justices of the supreme court, and judges of the superior courts, shall be liable to impeachment for any misdemeanor in office: but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit, under the state; but the party convicted or acquitted shall, nevertheless, be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the legislature may provide.

**Art. IV, § 21.** No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any state, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this state, and the legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony.

**Art. VI, § 1.** The judicial power of the state shall be vested in the senate, sitting as a court of impeachment, in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may establish in any incorporated city or town, or city and county.

**Art. VI, § 4.** The supreme court shall have appellate jurisdiction . . . in all criminal cases prosecuted by

indictment or information, in a court of record, on questions of law alone. . . . Each of the justices shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the supreme court, or before any superior court in the state, or before any judge thereof.

**Art. VI, § 5.** The superior courts shall have original jurisdiction . . . in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for. . . . They shall have appellate jurisdiction in such cases arising in justices' and other inferior courts in their respective counties, as may be prescribed by law. . . . Said courts, and their judges, shall have power to issue writs of . . . habeas corpus, on petition by, or on behalf of any person in actual custody, in their respective counties.

**Art. VI, § 19.** Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

**Art. XII, § 19.** No railroad or other transportation company shall grant free passes or passes or tickets at a discount to any person holding any office of honor, trust, or profit in this state; and the acceptance of any such pass or ticket by a member of the legislature or any public officer, other than railroad commissioner, shall work a forfeiture of his office.

**Art. XX, § 2.** Any citizen of this state who shall, after the adoption of this constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this state or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this constitution.

**Art. XX, § 10.** Every person shall be disqualified from holding any office of profit in this state who shall have

been convicted of having given or offered a bribe to procure his election or appointment.

**Art. XX, § 11.** Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting under adequate penalties all undue influence thereon from power, bribery, tumult or other improper practice.

Pen. Code—2



CORRESPONDING SECTIONS  
OF THE  
CRIMINAL PRACTICE ACT  
AND  
PENAL CODE.

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§ 401 .....	§ 1127	§ 439 .....	§ 1179
§ 402 .....	§ 1128	§ 440 .....	§ 1181
§ 403 .....	§ 1129	§ 441 .....	§ 1182
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§ 405 .....	§ 1136	§ 444 .....	§ 1185
§ 406 .....	§ 1137	§ 443 .....	§ 1186
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§ 418 .....	§ 1151	§ 456 .....	§ 1200
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§ 420 .....	§ 1153	§ 458 .....	§ 1202
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§ 555 .....	§ 1328	§ 593 .....	§ 1382
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§ 563 .....	§ 1336	§ 601 .....	§ 1404
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§ 639 .....	§ 1457	§ 670 .....	§ 1553
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# AN ACT TO ESTABLISH A PENAL CODE.

[Approved February 14th, 1872.]

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The people of the state of California, represented in senate and assembly, do enact as follows:

## TITLE OF THE ACT.

§ 1. This act shall be known as The Penal Code of California, and is divided into three parts, as follows:

I.—Of Crimes and Punishments.

II.—Of Criminal Procedure.

III.—Of the State Prison and County Jails. En. February 14, 1872.

This act, how cited: Post, sec. 24.

Construction of the codes, and of their various sections: See Pol. Code, secs. 4478 et seq.

## PRELIMINARY PROVISIONS.

- § 2. When this act takes effect.
- § 3. Not retroactive.
- § 4. Construction of the Penal Code.
- § 5. Provisions similar to existing laws, how construed.
- § 6. Effect of code upon past offenses.
- § 7. Certain terms defined in the senses in which they are used in this code.
- § 8. What intent to defraud is sufficient.
- § 9. Civil remedies preserved.
- § 10. Proceedings to impeach or remove officers and others preserved.
- § 11. Authority of courts-martial preserved. Courts of justices to punish for contempts.
- § 12. Of sections declaring crimes punishable. Duty of court.
- § 13. Punishments, how determined.
- § 14. Witness' testimony may be read against him on prosecution for perjury.
- § 15. "Crime" and "public offense" defined.
- § 16. Crimes, how divided.
- § 17. Felony and misdemeanor defined.
- § 18. Punishment of felony, when not otherwise prescribed.
- § 19. Punishment of misdemeanor, when not otherwise prescribed.
- § 20. To constitute crime there must be unity of act and intent.
- § 21. Intent, how manifested, and who considered of sound mind.
- § 22. Drunkenness no excuse for crime. When it may be considered.
- § 23. Certain statutes specified as continuing in force.
- § 24. This act, how cited.

§ 2. **When this act takes effect.** This code takes effect at twelve o'clock, noon, on the first day of January, eighteen hundred and seventy-three. En. February 14, 1872.

Effect of codes, generally: See Pol. Code, secs. 4478 et seq.

§ 3. **Not retroactive.** No part of it is retroactive, unless expressly so declared. En. February 14, 1872.

Cal. Rep. Cit. 106, 680.

Impairing vested rights: See Code Civ. Proc., sec. 8.

Corresponding sections.—The same section is found in each of the other three codes. See sec. 3 of each of the other codes.

§ 4. **Construction of the Penal Code.** The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its object and to promote justice. En. February 14, 1872.

Cal. Rep. Cit. 45, 431; 46, 117; 49, 70; 82, 274; 88, 139; 93, 584; 93, 631; 105, 558; 127, 316; 139, 382.

Rules of construction of code provisions, generally: See Pol. Code, secs. 4478 et seq.

Statutes in derogation of common law: See sec. 4 of each of the codes.

**§ 5. Provisions similar to existing laws, how construed.** The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments. En. February 14, 1872.

**§ 6. Effect of code upon past offenses.** No act or omission commenced after twelve o'clock, noon, of the day on which this code takes effect as a law, is criminal or punishable, except as prescribed or authorized by this code, or by some of the statutes which it specifies as continuing in force and as not affected by its provisions, or by some ordinance, municipal, county, or township regulation, passed or adopted under such statutes, and in force when this code takes effect. Any act or omission commenced prior to that time may be inquired of, prosecuted, and punished in the same manner as if this code had not been passed. En. February 14, 1872.

Cal. Rep. Cit. 46, 116, 46, 119; 55, 229.

Effect on past offenses.—Where, by subsequent statute, the punishment is increased it is *ex post facto*, and inoperative: Const. U. S., art. I, sec. 10, subd. 1.

**§ 7. Certain terms defined in the senses in which they are used in this code.** Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; the word "county" includes "city and county"; writing includes printing and typewriting; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person cannot write, his name being written near it, by a person who writes his own name as a witness; provided, that when a signature is made by mark it must, in order that the same may be acknowledged or serve as the

signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witnesses thereto.

The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage;

2. The words "neglect," "negligence," "negligent," and "negligently" import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns;

3. The word "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person;

4. The words "malice" and "maliciously" import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law;

5. The word "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission;

6. The word "bribe" signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote, or opinion, in any public or official capacity;

7. The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, canal-boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons;

8. The words "peace officer" signify any one of the officers mentioned in section eight hundred and seventeen;

9. The word "magistrate" signifies any one of the officers mentioned in section eight hundred and eight;



10. The word "property" includes both real and personal property;

11. The words "real property" are co-extensive with lands, tenements, and hereditaments;

12. The words "personal property" include money, goods, chattels, things in action, and evidences of debt;

13. The word "month" means a calendar month, unless otherwise expressed; the word "day-time" means the period between sunrise and sunset, and the word "night-time" means the period between sunset and sunrise;

14. The word "will" includes codicil;

15. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings;

16. Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning;

17. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority;

18. When the seal of a court or public officer is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word "seal" against his name;

19. The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the district and territories;

20. The word "section," whenever hereinafter employed, refers to a section of this code, unless some other code or statute is expressly mentioned. En. February 14, 1872. Am'd. 1873-4, 419; 1905, 635.

The purpose of the amendment is to make the section conform to the corresponding sections of the Civil Code and of the Code of Civil Procedure. The changes consist in the addition of the words

"county includes city and county"; of the words "and typewriting", and of the clause "provided, that when a signature is made by mark it must, in order that the same may be acknowledged or serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witnesses thereto." The above changes make the above section conform to the corresponding subdivision in section 17 of the Code of Civil Procedure and in section 14 of the Civil Code. The definitions of "night-time" and "day-time" are added in subdivision 13, following the definitions in sections 450 and 463 of this Code, which confined the definitions to the chapters in which they occurred. The word "canal-boat" is printed "canals, boats," in the official Statutes of 1873-4, page 421, amending the section, and is hereby corrected to conform to the manifest intention of the statute, and to the original form of the section as enacted in the Code of 1872. Subdivision 20 is also added to correspond with a like provision in the other Codes.—Code Commissioner's Note.

Cal. Rep. Cit. 58, 269; 67, 422; 68, 363; 68, 438; 70, 533; 72, 613; 72, 616; 82, 468; 96, 177; 96, 179; 105, 639; 130, 577; 136, 530; 141, 114; 141, 115; 144, 355. Subd. 1—120, 135. Subd. 4—93, 566; 120, 202; 127, 319; 129, 551. Subd. 5—75, 631. Subd. 6—110, 371. Subd. 15—82, 468. Subd. 16—135, 74.

§ 8. What intent to defraud is sufficient. Whenever, by any of the provisions of this code, an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association, or body politic or corporate, whatever. En. February 14, 1872.

§ 9. Civil remedies preserved. The omission to specify or affirm in this code any liability to damages, penalty, forfeiture, or other remedy imposed by law, and allowed to be recovered, or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same. En. February 14, 1872.

§ 10. Proceedings to impeach or remove officers and others preserved. The omission to specify or affirm in this code any ground of forfeiture of a public office, or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose, or suspend any public officer or other person holding any

trust, appointment, or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition, or suspension. En. February 14, 1872.

**§ 11. Authority of courts-martial preserved.** Courts of justice to punish for contempts. This code does not affect any power conferred by law upon any court-martial, or other military authority or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt. En. February 14, 1872.

Cal. Rep. Cit. 94, 333.

**§ 12. Of sections declaring crimes punishable. Duty of court.** The several sections of this code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed. En. February 14, 1872.

Cal. Rep. Cit. 93, 640; 110, 654.

Appointing time of pronouncing judgment: Post, sec. 1191.

Showing cause against the judgment: Post, sec. 1201.

**§ 13. Punishments, how determined.** Whenever in this code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this code. En. February 14, 1872.

**§ 14. Witness's testimony may be read against him on prosecution for perjury.** The various sections of this code which declare that evidence obtained upon the examination of a person as a witness cannot be received against

him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination. En. February 14, 1872.

§ 15. **“Crime” and “public offense” defined.** A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

First. Death.

Second. Imprisonment.

Third. Fine.

Fourth. Removal from office; or,

Fifth. Disqualification to hold and enjoy any office of honor, trust, or profit in this state. En. February 14, 1872.

Cal. Rep. Cit. 47, 479; 90, 278; 93, 439; 110, 656; 118, 460; 118, 482; 147, 533.

Crime and public offense: See post, secs. 16, 17.

“The use of the terms ‘crime,’ ‘felony,’ ‘misdemeanor,’ and ‘offense’ is far from uniform even among legal writers,” say the code commissioners, and after citing the definitions of several text-writers, they conclude:

“The definition of the section is based upon the usage which has grown up in this state of employing ‘crime’ and ‘offense’ in the extensive signification, and confining ‘felony’ and ‘misdemeanor’ to denote the classes into which crimes are divided, and is in substantial accord with the definitions given by Mr. Livingston: *Crim. Code*, art. LXXV.”

Subd. 1. Death punishment in case of treason: See post, sec. 37. Of murder: Post sec. 190.

Subd. 4. Removal from office: See post, secs. 737 et seq.; *Const.*, art. IV, secs. 18, 21; *Id.*, art. XII, sec. 19.

Subd. 5. Disqualification to hold office: *Const. Cal.*, art. XX, secs. 10, 11.

§ 16. **Crimes, how divided.** Crimes are divided into:  
First. Felonies; and,

Second. Misdemeanors. En. February 14, 1872.

Cal. Rep. Cit. 94, 574; 102, 428; 118, 460; 137, 268; 139, 213.

See next section.

§ 17. **Felony and misdemeanor defined.** A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime is a misdemeanor. When a crime, punishable by imprisonment in the state prison, is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the state prison. En. February 14, 1872. Am'd. 1873-4, 455.

Cal. Rep. Cit. 49, 395; 53, 428; 69, 605; 78, 306; 85, 87; 94, 574; 137, 268; 139, 213; 143, 599.

§ 18. **Punishment of felony, when not otherwise prescribed.** Except in cases where a different punishment is prescribed by this code, every offense declared to be a felony is punishable by imprisonment in the state prison, not exceeding five years. En. February 14, 1872.

Cal. Rep. Cit. 47, 479.

§ 19. **Punishment of misdemeanor, when not otherwise prescribed.** Except in cases where a different punishment is prescribed by this code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding five hundred dollars, or by both. En. February 14, 1872.

Cal. Rep. Cit. 68, 413; 85, 37; 85, 211; 87, 93; 102, 428; 114, 371; 114, 282; 124, 152; 124, 153; 124, 154; 139, 116.

§ 20. **To constitute crime there must be unity of act and intent.** In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence. En. February 14, 1872.

Cal. Rep. Cit. 63, 168; 93, 566; 116, 77; 129, 551; 138, 341.  
Intoxication, effect of: Post, sec. 22.

Insanity: Post, sec. 26.

§ 21. **Intent, how manifested, and who considered of sound mind.** The intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused. All persons are of sound mind who are neither idiots nor lunatics, nor affected with insanity. En. February 14, 1872.

Cal. Rep. Cit. 132, 329; 145, 140.

**Presumptions as to intention.—Conclusive presumption.**—It is provided in the Code of Civil Procedure that a malicious and guilty intent, from the deliberate commission of an unlawful act, for the purpose of injuring another, shall be conclusively presumed: Code Civ. Proc., sec. 1962.

§ 22. **Drunkenness no excuse for crime.** When it may be considered. No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act. En. February 14, 1872.

Cal. Rep. Cit. 65, 278; 93, 112; 93, 487; 95, 428; 100, 390; 103, 575; 115, 577; 122, 187; 122, 239; 123, 49; 132, 232; 132, 329; 132, 332.

§ 23. **Certain statutes specified as continuing in force.** Nothing in this code affects any of the provisions of the following statutes, but such statutes are recognized as continuing in force, notwithstanding the provisions of the codes, except so far as they have been repealed or affected by subsequent laws;

First. All acts incorporating or chartering municipal corporations, and acts amending or supplementing such acts.

Second. All acts consolidating cities and counties, and acts amending or supplementing such acts.

Third. All acts for funding the state debt, or any part thereof, and for issuing state bonds, and acts amending or supplementing such acts.

Fourth. All acts regulating and in relation to rodeos.

Fifth. All acts in relation to judges of the plains.

Sixth. All acts creating or regulating boards of water commissioners and overseers in the several townships or counties of the state.

Seventh. All acts in relation to a branch state prison.

Eighth. An act for the more effectual prevention of cruelty to animals, approved March thirtieth, eighteen hundred and sixty-eight.

Ninth. An act for the suppression of Chinese houses of ill-fame, approved March thirty-first, eighteen hundred and sixty-six.

Tenth. An act relating to the Home of the Inebriate of San Francisco, and to prescribe the powers and duties of the board of managers and the officers thereof, approved April first, eighteen hundred and seventy.

Eleventh. An act concerning marks and brands in the county of Siskiyou, approved March twentieth, eighteen hundred and sixty-six.

Twelfth. An act to prevent the destruction of fish in the waters of Bolinas Bay, in Marin County, approved March thirty-first, eighteen hundred and sixty-six.

Thirteenth. An act concerning trout in Siskiyou County, approved April second, eighteen hundred and sixty-six.

Fourteenth. An act to prevent the destruction of fish in Napa River and Sonoma Creek, approved January twenty-ninth, eighteen hundred and sixty-eight.

Fifteenth. An act to prevent the destruction of fish and game in, upon, and around the waters of Lake Merritt or Peralta, in the county of Alameda, approved March eighteenth, eighteen hundred and seventy.

Sixteenth. An act to regulate salmon fisheries in Eel

River, in Humboldt County, approved April eighteenth, eighteen hundred and fifty-nine.

Seventeenth. An act for the better protection of stock-raisers in the counties of Fresno, Tulare, Monterey and Mariposa, approved March twentieth, eighteen hundred and sixty-six.

Eighteenth. An act concerning oysters, approved April twenty-eighth, eighteen hundred and fifty-one.

Nineteenth. An act concerning oyster-beds, approved April second, eighteen hundred and sixty-six.

Twentieth. An act concerning gas companies, approved April fourth, eighteen hundred and seventy. En. February 14, 1872.

See further acts in force: Pol. Code, secs. 19, 4412.

Subds. 1-6. References to the acts referred to in the first six subdivisions will be found in the General Laws under the various titles.

Subd. 7. Branch prisons: See acts in Appendix, title State Prisons.

Subds. 8-20. The act referred to in subd. 8 will be found in Stats. 1868, 604; but see Stats. 1874, 499. In subd. 9, see Stats. 1866, 641; but see amendment, Stats. 1874, 84. In subd. 10, see Stats. 1870, 585; Stats. 1875-6, 325. [Repealed 1895, 76, 201.] In subd. 11, see Stats. 1866, 332. In subd. 12, see Stats. 1866, 637. In subd. 13, see Stats. 1866, 857. In subd. 14, see Stats. 1868, 13; but see amendment, Stats. 1871, 441. In subd. 15, see Stats. 1870, 325. In subd. 16, see Stats. 1859, 298. In subd. 17, see Stats. 1866, 322. In subd. 18, see Stats. 1851, 432; but see repealing clause, Stats. 1874, 940. In subd. 19, see Stats. 1866, 848; also see Stats. 1874, 940.

Many amendments and new sections to the Penal Code are taken from "An act to amend the Penal Code," approved March 30, 1874; Amendments 1873-4, 419. The amendatory act contained two other sections, in reference to the effect of the new provisions, as follows:



Sec. 88. All provisions of law inconsistent with the provisions of this act are repealed, except as to offenses committed before this act takes effect, and as to such offenses, and for the punishment of parties guilty thereof, the repealed provisions shall continue in force.

Sec. 89. This act shall take effect on the first day of July, one thousand eight hundred and seventy-four.

§24. **This act, how cited.** This act, whenever cited, enumerated, referred to, or amended, may be designated simply as the Penal Code, adding, when necessary, the number of the section. En. February 14, 1872.

This act, how cited.—The constitution nowhere uses the word “code,” but speaks of the way in which an “act” may be revised or amended: Art. IV, sec. 24.

Title of the act: See ante, sec. 1.



# PART I.

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## OF CRIMES AND PUNISHMENTS.

(§§ 26-680.)

(47)



## TITLE I.

### OF PERSONS LIABLE TO PUNISHMENT FOR CRIME.

§ 26. Who are capable of committing crimes.

§ 27. Who are liable to punishment.

§ 28. Prisoners to be discharged on Monday.

§ 26. Who are capable of committing crimes. All persons are capable of committing crimes except those belonging to the following classes:

1. Children under the age of fourteen, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness;

2. Idiots;

3. Lunatics and insane persons;

4. Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent;

5. Persons who committed the act charged without being conscious thereof;

6. Persons, who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence;

7. Married women (except for felonies) acting under the threats, command, or coercion of their husbands;

8. Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused. En. February 14, 1872. Am'd. 1873-4, 422.

Cal. Rep. Cit. 132, 329.

Idiots: See post, secs. 1367 et seq.

Acquittal on the ground of insanity, proceedings after and commitment to asylum: Post, sec. 1167.

Submitting the question of sanity to a jury: Post, sec. 1368.

§ 27. Who are liable to punishment. The following persons are liable to punishment under the laws of this state:

1. All persons who commit, in whole or in part, any crime within this state;

2. All who commit any offense without this state which, if committed within this state, would be larceny, robbery, or embezzlement under the laws of this state, and bring the property stolen or embezzled, or any part of it, or are found with it, or any part of it, within this state;

3. All who, being without this state, cause or aid, advise or encourage, another person to commit a crime within this state, and are afterwards found therein. En. February 14, 1872. Am'd. 1905, 638.

The amendment consists of a recasting of subdivision 2, designed to make it punishable in this state to embezzle money in another state and bring the money embezzled or some part of it into this state. The section as it now stands authorizes the conviction and punishment of persons committing larceny or robbery outside the state, who bring the property stolen into this state, but does not extend to the case of embezzlement.—Code Commissioner's Note.

Cal. Rep. Cit. 132, 232.

See post, sec. 778.

§ 28. Prisoners to be discharged on Monday. En. Stats. 1901, 11. Am'd. 1903, 236. Rep. 1905, 491.

## TITLE II.

### OF PARTIES TO CRIME.

§ 30. Classification of parties to crime.

§ 31. Who are principals.

§ 32. Who are accessories.

§ 33. Punishment of accessories.

§ 30. Classification of parties to crime. The parties to crimes are classified as:

1. Principals; and,

2. Accessories. En. February 14, 1872.

Cal. Rep. Cit. 144, 77.

Principals: See post, sec. 31.

Accessories: See post, sec. 32.

§ 31. Who are principals. All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission, and all persons counseling, advising, or encouraging children under the age of fourteen years, lunatics or idiots, to commit any crime, or who, by fraud, contrivance, or force, occasion the drunkenness of another for the purpose of causing him to commit any crime, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed. En. February 14, 1872.

Cal. Rep. Cit. 56, 398; 78, 86; 113, 179; 122, 492; 138, 627; 138, 630; 143, 264; 144, 77; 144, 79.

§ 32. Who are accessories. All persons who, after full knowledge that a felony has been committed, conceal it from the magistrate, or harbor and protect the person charged with or convicted thereof, are accessories. En. February 14, 1872.

Cal. Rep. Cit. 78, 87; 129, 366.

§ 33. Punishment of accessories. Except in cases where a different punishment is prescribed, an accessory is pun-

ishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding two years, or by fine not exceeding five thousand dollars. En. February 14, 1872.

Aiding in misdemeanor is a misdemeanor: See post, sec. 659.

### TITLE III.

#### OF OFFENSES AGAINST THE SOVEREIGNTY OF THE STATE.

§ 37. Treason, who only can commit.

§ 38. Misprision of treason.

§ 37. **Treason, who only can commit.** Treason against this state consists only in levying war against it, adhering to its enemies, or giving them aid and comfort, and can be committed only by persons owing allegiance to the state. The punishment of treason shall be death. En. February 14, 1872.

Treason against a state is an offense at common law, and is so recognized in the constitution of the United States: See Const. U. S., art. IV, sec. 2.

Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court: Const. Cal., art. I, sec. 20; see also, Const. U. S., art. III, sec. 3.

Two witnesses necessary: See Code Civ. Proc., sec. 1968.

Owing allegiance to the state: See Pol. Code, secs. 55, 56.

§ 38. **Misprision of treason.** Misprision of treason is the knowledge and concealment of treason, without otherwise assenting to or participating in the crime. It is punishable by imprisonment in the state prison for a term not exceeding five years. En. February 14, 1872.



## TITLE IV.

### OF CRIMES AGAINST THE ELECTIVE FRANCHISE.

40. Person acting as election officer without appointment.
41. Violation of election laws by certain officers a felony.
42. Fraudulent registration a felony.
- 42a. Allowing fraudulent registration.
43. Refusal to be sworn or to answer board of judges.
44. Refusal to obey summons of board.
45. Fraudulent voting.
46. Attempting to vote when not qualified.
47. Procuring illegal voting.
48. Changing ballots or altering returns by election officers.
49. Officers unfolding or marking tickets.
- 49a. Officer who cannot read or write, or refusing to serve.
50. Forging or altering returns.
51. Adding to or subtracting from votes cast.
52. Persons aiding and abetting.
53. Intimidating, corrupting, deceiving, or defrauding electors.
54. Furnishing money for elections.
- 54a. Receiving or contracting for any money or thing of value for voting or not voting.
- 54b. Promising or contributing any money or valuable consideration for a person's voting or not voting.
55. Offers to procure offices for electors.
- 55a. Soliciting or demanding candidate vote for or against any measure or bill.
56. Communicating such offer.
57. Giving or offering bribes to members of legislative caucus, etc.
- 57a. Officers of election aiding in wrongdoing.
58. Preventing public meetings.
59. Force, violence or restraint used to influence vote.
60. Betting on elections.
61. Violation of election laws by persons not officers.
62. Violation of election laws as to tickets.
- 62a. Circulating anonymous circulars relating to candidate a misdemeanor.
- 62b. Printer must put imprint on printed matter.
63. Advancing money by candidate for United States senate.
- 63½. Candidate or member of legislature accepting money.
- 63b. Sale of intoxicants on election days.
64. No prosecution against witness in election cases.
- 64½. Primary elections, provisions relating to.

§ 40. Person acting as election officer without appointment. Any person who acts as an election officer at any election, without first having been appointed and qualified as such, and any person who, not being an election officer, performs or discharges any of the duties of an election officer, in regard to the handling or counting or canvassing of any ballots cast at any election, shall be guilty of a felony, and on conviction be punished by imprisonment in the state prison for not less than two nor more than seven years. En. Stats. 1895, 74.

**§ 41. Violation of election laws by certain officers a felony.** Every person charged with the performance of any duty, under the provision of any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment for such acts or omissions is prescribed by this code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or by both. En. February 14, 1872.

Cal. Rep. Cit. 75, 628; 75, 631; 142, 79; 146, 309.

**§ 42. Fraudulent registration a felony.** Every person who willfully causes, procures, or allows himself to be registered in any register of electors required by law to be made or kept, knowing himself not to be entitled to such registration, is punishable by imprisonment in the state prison for not less than one nor more than three years. En. February 14, 1872. Am'd. 1905, 639.

The amendment conforms the section to section 21 of the Purity of Elections Act (Stats. 1893, p. 12).—Code Commissioner's Note.

**§ 42a. Allowing fraudulent registration.** Every person who willfully causes, procures, or allows any other person to be registered in any register of electors required by law to be made or kept, knowing him not to be entitled to such registration, is punishable by imprisonment in the state prison for not less than one nor more than three years. En. Stats. 1905, 639.

This is a codification of section 22 of the Purity of Elections Act (Stats. 1893, p. 12).—Code Commissioner's Note.

**§ 43. Refusal to be sworn or to answer board of judges.** Every person who, after being required by the board of judges at any election, refuses to be sworn, or being sworn, refuses to answer any pertinent question, propounded by such board, touching the right of another to vote, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1873-4, 423.

**§ 44. Refusal to obey summons of board.** Every person summoned to appear and testify before any board of registration, who willfully disobeys such summons, is guilty of a misdemeanor. En. February 14, 1872.

**§ 45. Fraudulent voting.** Every person not entitled to vote who fraudulently votes, and every person who votes more than once at any one election, or knowingly hands in two or more tickets, folded together, or changes any ballot after the same has been deposited in the ballot-box, or adds, or attempts to add, any ballot to those legally polled at any election, by fraudulently introducing the same into the ballot-box either before or after the ballots therein have been counted; or adds to, or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll-list, or ballots, or ballot-box, for the purpose of breaking up or invalidating such election, or willfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, is guilty of a felony. En. February 14, 1872. Am'd. 1905, 639.

Two clerical errors are corrected. The word "illegally," before "polled," is changed to "legally"; and the word "either" is omitted after "elector," and inserted between "ballot-box" and "before."—Code Commissioner's Note.

Cal. Rep. Cit. 91, 467; 145, 108.

**§ 46. Attempting to vote when not qualified.** Every person not entitled to vote, who fraudulently attempts to vote, or who, being entitled to vote, attempts to vote more than once at any election, or who personates, or attempts to personate, a person legally entitled to vote, is punishable by imprisonment in the state prison for not less than one nor more than two years. En. February 14, 1872. Am'd. 1905, 640.

Section 24 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.—Code Commissioner's Note.

**§ 47. Procuring illegal voting.** Every person who procures, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, or who aids or abets in the commission of any of the offenses mentioned in the preceding section, is

punishable by imprisonment in the state prison not exceeding two years. En. February 14, 1872. Am'd. 1905, 640.

Section 28 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.—Code Commissioner's Note.

**§ 48. Changing ballots or altering returns by election officers.** Every officer or clerk of election who aids in changing or destroying any poll list, or in placing any ballots in the ballot-box, or taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot-box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with the ballots polled any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so, when in his power to prevent it, or carries away or destroys or knowingly allows another to carry away or destroy any poll list, ballot-box, or ballots lawfully polled, is punishable by imprisonment in the state prison for not less than two nor more than seven years. En. February 14, 1872.

**§ 49. Officers of election unfolding or marking ballots.** Every inspector, judge, or clerk of an election who, previously to putting the ballot of an elector in the ballot-box, attempts to find out any name on such ballot or who opens or suffers the folded ballot of any elector which has been handed in, to be opened or examined previously to putting the same into the ballot-box, or who makes or places any mark or device on any folded ballot with a view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such inspector, judge, or clerk has fraudulently or illegally discovered to have been voted for by such elector, is punishable by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail, for not less than thirty days nor more than six months, or by both such fine and imprisonment. En. February 14, 1872. Am'd. 1905, 640.

Section 42 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.—Code Commissioner's Note.

**§ 49a. Officers of election who cannot read or write or refusing to serve.** Any person acting as a member of any election board, or as a clerk upon such board, who cannot read

and write the English language, or any person who refuses to act upon such board, or as a clerk thereof, after proper notification of his appointment, who is otherwise eligible, unless good and sufficient cause for such refusal is shown to the election board or board of supervisors, is guilty of a misdemeanor, and is subject to a fine of five hundred dollars, and upon failure to pay such fine, must be imprisoned in the county jail of the county for the period of one day for each two dollars of such fine. En. Stats. 1905, 640.

This is the last sentence of section 1142 of the Political Code, the matter being of a nature which has an appropriate place in this Code.—Code Commissioner's Note.

**§ 50. Forging or altering returns.** Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact held, or willfully substitutes forged or counterfeit returns of election in the place of true returns for a precinct, town, or ward where an election was actually held, is punishable by imprisonment in the state prison for a term not less than two nor more than seven years. En. February 14, 1872. Am'd. 1905, 641.

This is a codification of the first sentence of section 27 of the Purity of Elections Act (Stats. 1893, p. 12.)—Code Commissioner's Note.

**§ 51. Adding to or subtracting from votes cast.** Every person who willfully adds to, or subtracts from, the votes actually cast at an election, in any official or unofficial returns, or who alters such returns, is punishable by imprisonment in the state prison for not less than one nor more than five years. En. February 14, 1872. Am'd. 1905, 641.

This is a codification of the second sentence of section 27 of the Purity of Elections Act (Stats. 1893, p. 12.)—Code Commissioner's Note.

**§ 52. Persons aiding and abetting.** Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding sections, is punishable by imprisonment in the county jail for the period of six months, or in the state prison not exceeding two years. En. February 14, 1872. Am'd. 1873-4, 423.

**§ 53. Intimidating, corrupting, deceiving, or defrauding electors.** Every person who, by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly, attempts to influence any elector in giving his vote, or to

deter him from giving the same; or attempts by any means whatever to awe, restrain, hinder, or disturb any elector in the exercise of the right of suffrage, or furnishes any elector wishing to vote, who cannot read, with a ticket, informing or giving such elector to understand that it contains a name, written or printed thereon, different from the name which is written or printed thereon, or defrauds any elector at any such election by deceiving and causing such elector to vote for a different person for any office than he intended or desired to vote for; or who, being inspector, judge, or clerk of any election, while acting as such, induces or attempts to induce any elector, either by menace or reward, or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of felony. En. February 14, 1872. Am'd. 1893, 7.

§ 54. **Furnishing money for elections.** Every person who, with intent to promote the election of himself or any other person, either—

1. Furnishes entertainment at his expense to any meeting of electors previous to or during an election;

2. Pays for, procures, or engages to pay for any such entertainment;

3. Furnishes or engages to pay or deliver any money or property for the purpose of procuring the attendance of voters at the polls, or for the purpose of compensating any person for procuring attendance of voters at the polls, except for the conveyance of voters who are sick or infirm;

4. Furnishes or engages to pay or deliver any money or property for any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public meetings for the discussion of public questions, and of printing and circulating ballots, hand-bills, and other papers previous to such election;

—is guilty of a misdemeanor. En. February 14, 1872.

Buying appointment to office: Post, sec. 73.

§ 54a. **Receiving or contracting for any money or thing of value for voting or not voting.** It is unlawful for any person, directly, by himself, or through any other person:

1. To receive, agree, or contract for, before or during an election, any money, gift, loan, or other valuable consideration, office, place, or employment, for himself or any other person, for voting or agreeing to vote, or for coming or

agreeing to come to the polls, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote, or refraining or agreeing to refrain from voting, for any particular person or persons at any election;

2. To receive any money, or other valuable thing, during or after an election, on account of himself or any other person having voted, or refrained from voting, for any particular person or persons at such election, or on account of himself or any other person having come to the polls or remained away from the polls at such election, or on account of having induced any other person to vote or refrain from voting, or to vote or refrain from voting for any particular person or persons, or to come to or remain away from the polls at such election;

3. To receive any money or other valuable thing, before, during, or after election, on account of himself or any other person having voted to secure the election or indorsement of any other person as the nominee or candidate of any convention, organized assemblage of delegates, or other body representing, or claiming to represent, a political party or principle, or any club, society, or association, or on account of himself or any other person having aided in securing the selection or indorsement of any other person as a nominee or candidate as aforesaid.

Every person who commits any of the offenses mentioned in this section is punishable by imprisonment in the state prison for not less than one nor more than seven years. En. Stats. 1905, 641.

Section 20 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.—Cole Commissioner's Note.

**§ 54b. Promising or contributing any money or valuable consideration for a person's voting or not voting.** It is unlawful for any person, directly or indirectly, by himself or through any other person:

1. To pay, lend, or contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration to or for any voter, or to or for any other person, to induce such voter to vote or refrain from voting at any election, or to induce any voter to vote or refrain from voting at such election for any particular person or persons, or to induce such voter to come to the polls or remain away from the polls at such election, or on account of such voter having voted or refrained from voting, or having voted or



refrained from voting for any particular person, or having come to the polls or remained away from the polls at such election;

2. To give, offer, or promise any office, place, or employment, or to promise to procure, or endeavor to procure, any office, place, or employment to or for any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting at any election, or to induce any voter to vote or refrain from voting at such election for any particular person or persons;

3. To make any gift, loan, promise, offer, procurement, or agreement, as aforesaid, to, for, or with any person, in order to induce such person to procure, or endeavor to procure, the election of any person, or the vote of any voter at any election;

4. To procure, engage, promise, or endeavor to procure, in consequence of any such gift, loan, offer, promise, procurement, or agreement, the election of any person, or the vote of any voter at such election;

5. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same, or any part thereof, shall be used in bribery at any election; or to knowingly pay, or cause to be paid, any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part, expended in bribery at any election;

6. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same, or any part thereof, shall be used for boarding, lodging, or maintaining a person at any place or domicile in any election precinct, ward, or district, with intent to secure the vote of such person, or to induce such person to vote for any particular person or persons at any election;

7. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same, or any part thereof, shall be used to aid or assist any person to evade arrest, who is charged with the commission of a crime against the elective franchise, for which, if the person were convicted, the punishment would be imprisonment in the state prison;

8. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person,



in consideration of being selected or indorsed as the candidate of any convention, organized assemblage of delegates, or other body, representing, or claiming to represent, a political party or principle, or any club, society, or association, for a public office, or in consideration of the selection or indorsement of any other person as a candidate for a public office, or in consideration of any member of a convention, club, society, or association having voted to select or indorse any person as a candidate for a public office, except that a candidate for nomination to a public office may contribute such proportion of the cost and expense of holding a primary election as is authorized by the Political Code of this state, and no more;

9. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, in consideration of a person withdrawing as a candidate for a public office.

Every person who commits any of the offenses mentioned in this section is punishable by imprisonment in the state prison for not less than one year nor more than seven years. En. Stats. 1905, 642.

Section 19 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.—Code Commissioner's Note.

**§ 55. Officers to procure offices for electors.** Every person who, being a candidate at any election, offers or agrees to appoint or procure the appointment of any particular person to office, as an inducement or consideration to any person to vote for, or procure or aid in procuring the election of such candidate, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 99, 289.

**§ 55a. Soliciting or demanding that a candidate vote for or against any measure or bill.** Any person, either individually or as an officer or member of any committee or association, who solicits or demands of any candidate for the legislature, supervisor, school director, or for any legislative body, that he shall vote for or against any particular bill or measure which may come before such body to which he may be elected, and any candidate for any of such offices who signs or gives any pledge that he will vote for or against any particular bill or measure that may be brought before any such body, is guilty of a misdemeanor; and any candidate convicted under the provisions of this section is, in addi-

tion, disqualified from holding the office to which he may have been elected. The provisions of this section do not apply to any pledge or promise that any such candidate may give to a convention by which he may be nominated for any such office, or to those who sign a certificate for his nomination. En. Stats. 1905, 643.

This is a codification of the statute of 1897 to protect candidates for public office (Stats. 1897, p. 53).—Code Commissioner's Note.

**§ 56. Communicating such offer...** Every person, not being a candidate, who communicates any offer, made in violation of the last section, to any person, with intent to induce him to vote for or to procure or aid in procuring the election of the candidate making the offer, is guilty of a misdemeanor. En. February 14, 1872.

**§ 57. Giving or offering bribes to members of legislative caucus, etc.** Every person who gives or offers a bribe to any officer or member of any legislative caucus, political convention, committee, primary election, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit, in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another, and every person, member of either of the bodies in this section mentioned, who receives or offers to receive any such bribe, is punishable by imprisonment in the state prison not less than one nor more than seven years. En. February 14, 1872. Am'd. 1905, 644.

The change consists in the insertion of the word "seven" in place of "fourteen," conforming the section to section 25 of the Purity of Elections Act (Stats. 1893, p. 12).—Code Commissioner's Note.

Cal. Rep. Cit. 126, 352.

**§ 57a. Officers of election aiding in wrongdoing.** Every officer or clerk of election who aids in changing or destroying any poll-list or official ballot, or in wrongfully placing any ballots in the ballot-box, or in taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot-box, before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with, the ballots polled, any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such

election, or allows another to do so, when in his power to prevent it, or carries away or destroys, or knowingly allows another to carry away or destroy, any poll-list, ballot-box, or ballots lawfully polled, is punishable by imprisonment in the state prison for not less than two nor more than seven years. En. Stats. 1905, 644.

This is a codification of section 26 of the Purity of Elections Act (Stats. 1893, p. 12.)—Code Commissioner's Note.

**§ 58. Preventing public meetings.** Every person who, by threats, intimidations, or unlawful violence, willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions, is guilty of a misdemeanor. En. February 14, 1872.

**§ 59. Force, violence or restraint used to influence votes.** It is unlawful for any person, directly or indirectly, by himself or any other person in his behalf, to make use of, or threaten to make use of, any force, violence, or restraint, or to inflict or threaten the infliction, by himself or through any other person, of any injury, damage, harm, or loss, or in any manner to practice intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting at any election, or to vote or refrain from voting for any particular person or persons at any election, or on account of such person or persons at any election, or on account of such person having voted or refrained from voting at any election. And it is unlawful for any person, by abduction, duress, or any forcible or fraudulent device or contrivance whatever, to impede, prevent, or otherwise interfere with the free exercise of the elective franchise by any voter; or to compel, induce, or prevail upon any voter either to give or refrain from giving his vote at any election, or to give or refrain from giving his vote for any particular person or persons at any election. It is not lawful for any employer, in paying his employees the salary or wages due them, to inclose their pay in "pay envelopes" upon which there is written or printed the name of any candidate, or any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees. Nor is it lawful for any employer, within ninety days of any election, to put up or otherwise exhibit in his factory, workshop, or other establishment or place where his workmen or employes may be working, any hand-bill or placard containing any threat, notice, or information, that

in case any particular ticket of a political party, or organization, or candidate shall be elected, work in his place or establishment will lease, in whole or in part, or his place or establishment be closed up, or the salaries or wages of his workmen or employees be reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his workmen or employees. This section applies to corporations as well as individuals, and any person or corporation violating the provisions of this section is guilty of a misdemeanor, and any corporation violating this section shall forfeit its charter. En. February 14, 1872. Am'd. 1905, 644.

This is a codification of section 41 of the Purity of Elections Act (Stats. 1893, p. 12.)—Code Commissioner's Note.

**§ 60. Betting on elections.** Every person who makes, offers, or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor. En. February 14, 1872.

**§ 61. Violation of election laws by persons not officers.** Every person who willfully violates any of the provisions of the laws of this state relating to elections is, unless a different punishment for such violation is prescribed by this code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or by both. En. February 14, 1872.

The election laws of the state are found in title II of part III of the Political Code, secs. 1041-1375, inclusive.

Act to prohibit piece clubs and prevent extortion from candidates: See post, Appendix, title Elections.

**§ 62. Violation of election laws as to tickets.** Every person who prints any ticket not in conformity with the provisions of chapter eight of title two of part three of the Political Code, or who circulates or gives to another any ticket, knowing at the time that such ticket does not conform to the provisions of chapter eight of title two of part three of the Political Code, is guilty of a misdemeanor. En. Stats. 1873-4, 456. Am'd. 1905, 645.

The change consists in the insertion of the words "the provisions of chapter eight of title two of part three," in place of "section one thousand one hundred and ninety-one." Section 1191 does not treat of the form of election ballots, and the reference is therefore inapplicable.—Code Commissioner's Note.

Act to prevent sale of intoxicants on election days: See post, Appendix, title Intoxicating Liquors.

§ 62a. **Circulation of anonymous circulars referring to political candidates.** Every person who intentionally writes, prints, posts, or distributes, or causes to be written, printed, posted, or distributed, any circular, pamphlet, letter, or poster which is designed or intended to injure or defeat any candidate for nomination or election to any public office by reflecting upon his personal character or political action, unless there appears upon such circular, pamphlet, letter, or poster, in a conspicuous place, either the name of the chairman and secretary or the names of two officers at least of the political or other organization issuing the same, or the name and residence, with the street and number thereof, if any, of some voter of this state, and responsible therefor, shall be guilty of a misdemeanor. En. Stats. 1901, 297.

§ 62b. **Printer must put imprint on printed matter.** Every person who prints any circular, pamphlet, letter, or poster of the kind or character mentioned in section sixty-two a of this code, without adding thereto his name, showing the printing office at which the same was printed, is guilty of a misdemeanor. En. Stats. 1901, 298.

§ 63. **Advancing money by candidate for United States senate.** Every candidate for United States senator at an approaching session of the legislature, and every person acting for or on behalf of any such candidate for senator in the congress of the United States at an approaching session of the legislature, who shall advance or give or loan, or promise to advance or give or loan, any money or property to any candidate for the legislature, before or after his nomination, or before or after his election, under an express or implied promise that such candidate for the legislature (whether nominated or not, or before or after his election) will support or vote for such candidate for

senator in the congress of the United States at an approaching session of the legislature, shall be deemed guilty of a felony. The advancing, giving, or loaning of money or property, or the promise to advance, give, or loan money or property to any candidate for the legislature by any candidate for senator as aforesaid, or by any person for him, or on his behalf, as aforesaid, shall be deemed prima facie proof of an express or implied agreement that such candidate for the legislature will, if elected to the legislature, vote for such candidate for senator in congress. En. Stats. 1899, 83.

§ 63½. Candidate or member of legislature accepting money. Every person being a member-elect of the legislature, and every person being a candidate for the legislature, and every person being a candidate for nomination for the legislature, who shall accept any money or property from any candidate for senator in the congress of the United States before the legislature at an approaching session thereof, or from any other person acting for or on behalf of any such candidate for senator in the congress of the United States at an approaching session of the legislature, under an express or implied promise that such member-elect of the legislature, or such candidate for the legislature, or candidate for nomination for the legislature, will, if elected as a member of the legislature, support or vote for any such candidate for senator in the congress of the United States for that office, shall be deemed guilty of a felony. The receipt of money or property by any member-elect of the legislature, and by any candidate for the legislature, and by any candidate for nomination for the legislature, from any candidate before the legislature for senator in congress at an approaching session of the legislature as aforesaid, or from any person acting for or on behalf of any such candidate for senator in congress as aforesaid, shall be prima facie proof of an express or implied agreement that such member-elect of the legislature will vote for such candidate for senator as aforesaid, and that such candidate, or candidate for nomination for the legislature, will, if elected, vote for such candidate for senator as aforesaid. En. Stats. 1899, 84.

§ 63b. Sale of intoxicants on election day. Every person keeping a public house, saloon, or drinking place, whether licensed or unlicensed, who sells, gives away, or

furnishes spirituous or malt liquors, wine, or any other intoxicant, on any part of any day set apart for any general or special election, in any election district or precinct in any county of the state where an election is in progress, during the hours when by law the polls are required to be kept open, is guilty of a misdemeanor. En. Stats. 1905. 645.

This is a codification of the statute of 1873-4, page 297.—Code Commissioner's Note.

§ 64. No prosecution against witness testifying in election cases. No person otherwise competent as a witness, shall be disqualified or excused from testifying concerning any of the offenses enumerated and prescribed in this title, on the ground that such testimony may criminate himself; but no prosecution can afterwards be had against such witness for any such offense concerning which he testified for the prosecution. En. Stats. 1891, 185.

Cal. Rep. Cit. 146, 309; 146, 310; 146, 311; 146, 314; 146, 315.

§ 64½. Primary elections, provisions relating to. All the provisions of sections forty to sixty-four of this code, both inclusive, shall apply with like force and effect to elections, known and designated as primary elections, held and conducted under official supervision pursuant to law and to registration therefor, as to other elections, whether the word "primary" be used in connection with the word "election" or "elections" used in said sections or not. En. Stats. 1899, 59; 1899, 153. [Another act of the same number and in the precise words was also approved March 20, 1899, Stats. 1899, 59.]



## TITLE V.

### OF CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE STATE.

- 65. Acting in a public capacity without having qualified.
- 66. Acts of officers de facto not affected.
- 67. Giving or offering bribes to executive officers.
- 68. Asking or receiving bribes.
- 69. Resisting officers.
- 70. Extortion.
- 71. Officers illegally interested in contracts.
- 72. Presenting fraudulent bills or claims for allowance or payment
- 73. Buying appointments to office.
- 74. Taking rewards for deputation.
- 74a. Retaining part of salary.
- 75. Exercising functions of office wrongfully.
- 76. Refusal to surrender books, etc., to successor.
- 77. Sections to apply to administrative and ministerial officers.

§ 65. Acting in a public capacity without having qualified. Every person who exercises any function of a public office without taking the oath of office, or without giving the required bond, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1873-4, 423.

Oath of office: Const. Cal., art. XX, sec. 3; see Pol. Code, secs. 904 et seq.

§ 66. Acts of officers de facto not affected. The last section shall not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts. En. February 14, 1872.

§ 67. Giving or offering bribes to executive officers. Every person who gives or offers any bribe to any executive officer of this state, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in the state prison not less than one nor more than fourteen years, and is disqualified from holding any office in this state. En. February 14, 1872.

Cal. Rep. Cit. 62, 493; 62, 494; 62, 495; 64, 162.

Bribery of judicial officer: See post, sec. 92.

Bribery of legislator: See post, sec. 85.



**§ 68. Asking or receiving bribes.** Every executive officer, or person elected or appointed to an executive office, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the state prison not less than one nor more than fourteen years; and, in addition thereto, forfeits his office, and is forever disqualified from holding any office in this state. En. February 14, 1872.

Cal. Rep. Cit. 64, 158; 68, 550; 137, 14; 137, 15; 137, 16.

**§ 69. Resisting officers.** Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years. En. February 14, 1872.

Resisting officers: See, generally, post, sec. 148.

**§ 70. Extortion.** Every executive or ministerial officer who knowingly asks or receives any emolument, gratuity, or reward, or any promise thereof, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1873-4, 423.

Cal. Rep. Cit. 60, 117; 145, 638.

Extortion by judicial officer: See post, sec. 94.

**§ 71. Officers illegally interested in contracts.** Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, who violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars, or by imprisonment in the state prison not more than five years, and is forever disqualified from holding any office in this state. En. February 14, 1872.

Cal. Rep. Cit. 125, 122.

**§ 72. Presenting fraudulent bills or claims for allowance or payment.** Every person who, with intent to defraud,

presents for allowance or for payment to any state board or officer, or to any county, town, city, ward, or village board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of felony. En. February 14, 1872.

Cal. Rep. Cit. 71, 196; 135, 269; 145, 105; 145, 109; 145, 110.

**§ 73. Buying appointments to office.** Every person who gives or offers any gratuity or reward, in consideration that he or any other person shall be appointed to any public office, or shall be permitted to exercise or discharge the duties thereof, is guilty of a misdemeanor. En. February 14, 1872.

Constitutional provision.—Every person shall be disqualified from holding any office of profit in this state who shall have been convicted of having given or offered a bribe to procure his election or appointment: Const. Cal., art. XX, sec. 10.

**§ 74. Taking rewards for deputation.** Every public officer who, for any gratuity or reward, appoints another person to a public office, or permits another person to exercise or discharge any of the duties of his office, is punishable by a fine not exceeding five thousand dollars, and, in addition thereto, forfeits his office, and is forever disqualified from holding any office in this state. En. February 14, 1872.

**§ 74a. Retaining part of salary.** Every officer of this state, or of any county, city and county, city, or township therein, who accepts, keeps, retains or diverts for his own use or the use of any other person any part of the salary or fees allowed by law to his deputy, clerk, or other subordinate officer, is guilty of a felony. En. Stats. 1905, 646.

This is a codification of the provisions of the statute of 1871-2, page 951, with the following changes; the word "accepts" is inserted in place of "keeps," and the phrase "for his own use" is added after "retains."—Code Commissioner's Note.

**§ 75. Exercising functions of office wrongfully.** Every person who willfully and knowingly intrudes himself into any public office to which he has not been elected or appointed, and every person who, having been an executive officer, willfully exercises any of the functions of his office after his term has expired, and a successor has been elected

or appointed and has qualified, is guilty of a misdemeanor. En. February 14, 1872.

§ 76. Refusal to surrender books, etc., to successor. Every officer whose office is abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he has resigned or been legally removed from office, willfully and unlawfully withholds or detains from his successor, or other person entitled thereto, the records, papers, documents, or other writings appertaining or belonging to his office, or mutilates, destroys or takes away the same, or willfully and unlawfully withholds or detains from his successor, or other person entitled thereto, any money or property in his custody as such officer, is punishable by imprisonment in the state prison not less than one nor more than ten years. En. February 14, 1872. Am'd. 1905, 646.

The change consists in the addition of the clause "or willfully and unlawfully withholds or detains from his successor, or other person entitled thereto, any money or property in his custody as such officer." The section as it now stands makes it punishable only for an officer to retain writings or records appertaining or belonging to his office, but does not extend to the manifestly graver offense above noted.—Code Commissioner's Note.

Cal. Rep. Cit. 47, 130; 103, 493.

§ 77. Sections to apply to administrative and ministerial officers. The various provisions of this chapter apply to administrative and ministerial officers, in the same manner as if they were mentioned therein. En. February 14, 1872.

## TITLE VI.

### OF CRIMES AGAINST THE LEGISLATIVE POWER.

- § 81. Preventing the meeting of the legislature.
- § 82. Disturbing the legislature while in session.
- § 83. Altering draft of bill or resolution.
- § 84. Altering enrolled copy of bill or resolution.
- § 85. Giving or offering bribes to members of the legislature.
- § 86. Receiving bribes by members of the legislature.
- § 87. Witnesses refusing to attend, etc., before the legislature.
- § 88. Bribes by members of the legislature.
- § 89. Lobbying.

§ 81. Preventing the meeting of the legislature. Every person who willfully, and by force or fraud, prevents the legislature of this state, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is guilty of felony. En. February 14, 1872.

§ 82. **Disturbing the legislature while in session.** Every person who willfully disturbs the legislature of this state, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor. En. February 14, 1872.

§ 83. **Altering draft of bill or resolution.** Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of felony. En. February 14, 1872.

§ 84. **Altering enrolled copy of bill or resolution.** Every person who fraudulently alters the enrolled copy of any bill or resolution which has been passed or adopted by the legislature of this state, with intent to procure it to be approved by the governor, or certified by the secretary of state, or printed or published by the printer of the statutes, in language different from that in which it was passed or adopted by the legislature, is guilty of felony. En. February 14, 1872.

§ 85. **Giving or offering bribes to members of the legislature.** Every person who gives or offers to give a bribe to any member of the legislature, or to another person for him, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withholding his vote, or in not attending the house or any committee of which he is a member, is punishable by imprisonment in the state prison not less than one nor more than ten years. En. February 14, 1872.

Bribery: See ante, secs. 67, 68.

§ 86. **Receiving bribes by members of the legislature.** Every member of either of the houses composing the legislature of this state who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner, or upon any particular side of any question or matter upon which he

may be required to act in his official capacity, or gives, or offers, or promises to give any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question, is punishable by imprisonment in the state prison not less than one nor more than fourteen years, and upon conviction thereof shall, in addition to said punishment, forfeit his office, be disfranchised, and forever disqualified from holding any office or public trust. En. February 14, 1872. Am'd. 1880, 7.

The section is based upon Stats. 1863, 645, secs. 1, 2, which the code commissioners in their note say was "extended, however, to embrace what is known as 'log-rolling,' or agreements to exchange votes for or against measures pending before the legislature; and also so as to embrace deceits and concealments practiced upon members of the legislature to obtain their votes." And they conclude: "That what, in the technical vocabulary of politicians, is termed 'log-rolling,' is a misdemeanor at common law, punishable by indictment."

§ 87. **Witnesses refusing to attend, etc., before the legislature.** Every person who, being summoned to attend as witness before either house of the legislature or any committee thereof, refuses or neglects, without lawful excuse, to attend pursuant to such summons; and every person who, being present before either house of the legislature or any committee thereof, willfully refuses to be sworn, or to answer any material and proper question, or to produce, upon reasonable notice, any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor. En. February 14, 1872.

§ 88. **Bribes by members of the legislature.** Every member of the legislature convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office, and is forever disqualified from holding any office in this state. En. February 14, 1872.

§ 89. **Lobbying.** Every person who obtains, or seeks to obtain money or other thing of value from another person, upon a pretense, claim, or representation that he can or will improperly influence in any manner the action of any member of a legislative body in regard to any vote or legislative matter, is guilty of a felony. Upon the trial

no person otherwise competent as a witness shall be excused from testifying as such concerning the offense charged, on the grounds that such testimony may criminate himself, or subject him to public infamy, but such testimony shall not afterward be used against him in any judicial proceeding, except for perjury in giving such testimony. En. Stats. 1873-4, 456. Am'd. 1880, 7.

## TITLE VII.

### OF CRIMES AGAINST PUBLIC JUSTICE.

Chapter I. Bribery and Corruption, §§ 92-100.

II. Rescue, §§ 101, 102.

III. Escapes and Aiding Therein, §§ 105-111.

IV. Forging, Stealing, Mutilating, and Falsifying Judicial and Public Records and Documents, §§ 113-117.

V. Perjury and Subornation of Perjury, §§ 118-129.

VI. Falsifying Evidence, §§ 132-138.

VII. Other Offenses Against Public Justice, §§ 142-181.

VIII. Conspiracy, §§ 182-185.

## CHAPTER I.

### BRIBERY AND CORRUPTION.

- § 92. Giving bribes to judges, jurors, referees, etc.
- § 93. Receiving bribes by judicial officers, jurors, etc.
- § 94. Extortion.
- § 95. Improper attempts to influence jurors, referees, etc.
- § 96. Misconduct of jurors, referees, etc.
- § 97. Justice or constable purchasing judgment.
- § 98. Officers convicted of, disfranchised.
- § 99. Superintendent of printing, interest in contracts, etc.
- § 100. Superintendent of state printing, penalty for collusion.

§ 92. Giving bribes to judges, jurors, referees, etc. Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, or umpire, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or

question which is or may be brought before him for decision, is punishable by imprisonment in the state prison not less than one nor more than ten years. En. February 14, 1872.

Bribery of executive officers: See ante, sec. 67.

§ 93. **Receiving bribes by judicial officers, jurors, etc.** Every judicial officer, juror, referee, arbitrator, or umpire, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or decision upon any matters or question which is or may be brought before him for decision, shall be influenced thereby, is punishable by imprisonment in the state prison not less than one nor more than ten years. En. February 14, 1872.

Cal. Rep. Cit. 46, 652; 64, 436; 99, 328; 99, 330.

§ 94. **Extortion.** Every judicial officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor. Every judicial officer who shall ask or receive the whole or any part of the fees allowed by law to any stenographer or reporter appointed by him, or any other person, to record the proceedings of any court or investigation held by him, shall be guilty of a misdemeanor, and upon conviction thereof shall forfeit his office. Any stenographer or reporter, appointed by any judicial officer in this state, who shall pay, or offer to pay, the whole or any part of the fees allowed him by law for his appointment or retention in office, shall be guilty of a misdemeanor, and upon conviction thereof shall be forever disqualified from holding any similar office in the courts of this state. En. February 14, 1872. Am'd. 1895, 30.

Extortion by executive officer: See ante, sec. 70.

§ 95. **Improper attempts to influence jurors, referees, etc.** Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator, or umpire, or appointed a referee, in respect to his verdict in, or decision of any cause or proceeding, pending or about to be brought before him, either:

1. By means of any communication, oral or written, had with him except in the regular course of proceedings;



2. By means of any book, paper, or instrument exhibited, otherwise than in the regular course of proceedings;

3. By means of any threat, intimidation, persuasion, or entreaty; or,

4. By means of any promise, or assurance of any pecuniary or other advantage;

—is punishable by fine not exceeding five thousand dollars, or by imprisonment in the state prison not exceeding five years. En. February 14, 1872. Am'd. 1873-4, 424.

Cal. Rep. Cit. 61, 135; 64, 436; 121, 389.

§ 96. **Misconduct of jurors, referees, etc.** Every juror, or person drawn or summoned as a juror, or chosen arbitrator or umpire, or appointed referee, who either:

1. Makes any promise or agreement to give a verdict or decision for or against any party; or,

2. Willfully and corruptly permits any communication to be made to him, or receives any book, paper, instrument, or information relating to any cause or matter pending before him, except according to the regular course of proceedings, is punishable by fine not exceeding five thousand dollars, or by imprisonment in the state prison not exceeding five years. En. February 14, 1872. Am'd. 1873-4, 42.

Cal. Rep. Cit. 64, 436; 99, 330.

§ 97. **Justice or constable purchasing judgment.** Every justice of the peace or constable of the same township who purchases or is interested in the purchase of any judgment or part thereof on the docket of, or on any docket in possession of, such justice, is guilty of a misdemeanor. En. February 14, 1872.

§ 98. **Officers convicted of, disfranchised.** Every officer convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office, and is forever disqualified from holding any office in this state. En. February 14, 1872.

§ 99. **Superintendent of printing, interest in contracts, etc.** The superintendent of state printing shall not, during his continuance in office, have any interest, either directly or indirectly, in any contract in any way connected with his office as superintendent of state printing; nor shall



he, during said period, be interested either directly or indirectly, in any state printing, binding, engraving, lithographing, or other state work of any kind connected with his said office; nor shall he, directly or indirectly, be interested in any contract for furnishing paper, or other printing stock or material, to or for use in his said office; and any violations of these provisions shall subject him, on conviction before a court of competent jurisdiction, to imprisonment in the state prison for a term of not less than two years nor more than five years, and to a fine of not less than one thousand dollars nor more than three thousand dollars, or by both such fine and imprisonment. En. Stats. 1875-6, 19. Am'd. 1877-8, 11; 1895, 235.

§ 100. Superintendent of state printing, penalty for collusion. If the superintendent of state printing corruptly colludes with any person or persons furnishing paper or materials, or bidding therefor, or with any other person or persons, or has any secret understanding with him or them, by himself or through others, to defraud the state, or by which the state is defrauded or made to sustain a loss, contrary to the true intent and meaning of this chapter, he, upon conviction thereof, forfeits his office, and is subject to imprisonment in the state prison, for a term of not less than two years, and to a fine of not less than one thousand dollars nor more than three thousand dollars, or both such fine and imprisonment. En. Stats. 1875-6, 19. Am'd. 1905, 647.

The change consists in the omission of the word "said" before "superintendent," the insertion of the word "chapter" in place of "act," and the omission of the phrase "in any court of competent jurisdiction," it being entirely unnecessary.—Code Commissioner's Note.

Section 5 of an act entitled "An act to amend the Political and Penal Codes, concerning public printing, and for other purposes," approved April 3, 1876 (see Amendments 1875-6, 16), embraced sections 99 and 100 of the Penal Code. That act also amended a number of the sections of the Political Code, relating to the public printing, and the reference in section 100 is intended to be to that act, and not to the Penal Code.

## CHAPTER II.

## RESCUES.

§ 101. Rescuing prisoners.

§ 102. Retaking goods from custody of officer.

§ 101. Rescuing prisoners. Every person who rescues or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from any prison, or from any officer or person having him in lawful custody, is punishable as follows:

1. If such prisoner was in custody upon a conviction of felony punishable with death: by imprisonment in the state prison not less than one nor more than fourteen years;

2. If such prisoner was in custody upon a conviction of any other felony; by imprisonment in the state prison not less than six months, nor more than five years;

3. If such prisoner was in custody upon a charge of felony: by a fine not exceeding one thousand dollars, and imprisonment in the county jail not exceeding two years;

4. If such prisoner was in custody otherwise than upon a charge or conviction of felony: by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding six months. En. February 14, 1872.

§ 102. Retaking goods from custody of officer. Every person who willfully injures or destroys, or takes or attempts to take, or assists any person in taking or attempting to take, from the custody of any officer or person any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor. En. February 14, 1872.

## CHAPTER III.

## ESCAPES, AND AIDING THEREIN.

§ 105. Escapes from state prison, punishment of.

§ 106. Attempt to escape from state prison.

§ 107. Escapes from other than state prison.

§ 108. Officers suffering convicts to escape.

§ 109. Assisting prisoners to escape.

§ 110. Carrying into prison things useful to aid in an escape.

§ 111. Expense of trial for escape.

§ 105. Escapes from state prison, punishment of. Every prisoner confined in a state prison, for a term less than for

life, who escapes therefrom, is punishable by imprisonment in a state prison for a term of not less than one year; said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison. En. February 14, 1872. Am'd. 1880, 42; 1905, 723.

105. The present section is open to the objection that the punishment prescribed is unequal, not proportionate to the offense, and its constitutionality on that account has been sometimes doubted. The cases of *State v. Lewin* (Kan.), 37 Pac. Rep. 168; *Barbier v. Connolly*, 113 U. S. 27; *Coon Hing v. Crowley*, 113 U. S. 703; *Hayes v. Missouri*, 120 U. S. 68; *Home Ins. Co. v. N. Y.*, 134 U. S. 594; *Pembina Mngl. Co. v. Penn.*, 125 U. S. 181; *Crowley v. Christenson*, 137 U. S. 86; *Yick Wo v. Hopkins*, 113 U. S. 358; *Civil Rights Cases*, 103 U. S. 3, are cited in behalf of this view. The amendment is strongly urged by the district attorney of Marin County.—Code Commissioner's Note.

Cal. Rep. Cit. 88, 170; 132, 348; 135, 343; 145, 664.

See section 109 of this code for the punishment imposed in this state upon a person who assists a prisoner confined in any prison, or in the lawful custody of any officer or person, to escape.

Escape suffered by officers: Post, sec. 108.

Killing escaped prisoner is justifiable, when: See post, sec. 196.

§ 106. Attempt to escape from state prison. Every prisoner confined in the state prison for a term less than for life, who attempts to escape from such prison, is guilty of a felony, and, on conviction thereof, the term of imprisonment therefor shall commence from the time such convict would otherwise have been discharged from said prison. En. February 14, 1872. Am'd. 1880, 42.

§ 107. Escapes from other than state prison. Every prisoner confined in any other prison than a state prison, who escapes or attempts to escape therefrom, is guilty of a misdemeanor. En. February 14, 1872.

§ 108. Officers suffering convicts to escape. Every keeper of a prison, sheriff, deputy sheriff, constable, or jailer, or person employed as a guard, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody, is punishable by imprisonment in the state prison not exceeding ten years, and fine not exceeding ten thousand dollars. En. February 14, 1872.

§ 109. **Assisting prisoners to escape.** Every person who willfully assists any prisoner confined in any prison or jail, or any inmate of any public training school or reformatory, or any person in the lawful custody of any officer or person, to escape, or in an attempt to escape from such prison or jail, or public training school or reformatory, or custody, is punishable as provided in section one hundred and eight. En. February 14, 1872. Am'd. 1905, 647.

109. The amendment is designed to make it punishable to assist the escape of inmates of reformatories, and to accomplish this end the following insertions have been made: The words "or jail, or reformatory," the words "or any person," and the words "or jail, or public training school, or reformatory."—Code Commissioner's Note.

§ 110. **Carrying into prison things useful to aid in escape.** Every person who carries or sends into a prison, jail, public training school, or reformatory, anything useful to aid a prisoner or inmate in making his escape, with intent thereby to facilitate the escape of any prisoner or inmate confined therein, is punishable as provided in section one hundred and eight. En. February 14, 1872. Am'd. 1905, 647.

110. The change is in line with the proposed change in section 109. The words "jail, public training school, or reformatory" are inserted, and the words "or inmate" are added after "prisoner."—Code Commissioner's Note.

§ 111. **Expense of trial for escape.** Whenever a trial is had of any person under any of the provisions of sections one hundred and five and one hundred and six, and whenever a convict in the state prison is tried for any crime committed therein, the county clerk of the county where such trial is had must make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such convict, and of the execution of the sentence of such convict, properly certified to by a judge of the superior court of such county, which statement must be sent to the board of state prison directors for their approval; and after such approval, said board must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison, to the county treasurer of the county where such trial was had. En. Stats. 1880, 9. Am'd. 1905, 774.

111. The change consists in the insertion of the words "and of the execution of the sentence of such convict," after "convict," and substitution of the words "judge of the superior court of such county" for "superior judge of said county." It is manifestly proper that the county should be recouped for the expenses covered by the amendment.—Code Commissioner's Note.

**109.** Any person who wilfully assists any paroled prisoner whose parole has been revoked, any escape, any prisoner confined in any prison or jail, or any inmate of any public training school or reformatory, or any person in the lawful custody of any officer or person, to escape, or in an attempt to escape from such prison or jail, or public training school or reformatory, or custody, is punishable as provided in section one hundred and eight of the Penal Code. (In effect March 15, 1907.)



## CHAPTER IV.

## FORGING, STEALING, MUTILATING, AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

- § 113. Larceny, destruction, etc., of records by officers.
- § 114. Larceny, destruction, etc., of records by others.
- § 115. Offering false or forged instruments to be recorded.
- § 116. Adding names, etc., to jury lists.
- § 117. Falsifying jury lists, etc.

§ 113. Larceny, destruction, etc., of records by officers. Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper, or proceeding, or who permits any other person so to do, is punishable by imprisonment in the state prison not less than one nor more than fourteen years. En. February 14, 1872.

Cal. Rep. Cit. 96, 174; 96, 175; 96, 179; 96, 180.

§ 114. Larceny, destruction, etc., of records by others. Every person not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding one hundred dollars, or by both. En. February 14, 1872.

Cal. Rep. Cit. 96, 174; 96, 180.

§ 115. Offering false or forged instruments to be recorded. Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, or registered, or recorded under any law of this state, or of the United States, is guilty of felony. En. February 14, 1872.

Cal. Rep. Cit. 84, 569; 133, 2.

§ 116. Adding names, etc., to jury lists. Every person who adds any names to the list of persons selected to serve as jurors for the county, either by placing the same in the jury-box, or otherwise, or extracts any name there-

from, or destroys the jury-box, or any of the pieces of paper containing the names of jurors, or mutilates or defaces such names so that the same cannot be read, or changes such names on the pieces of paper, except in cases allowed by law, is guilty of a felony. En. February 14, 1872. Am'd. 1873-4, 425.

§ 117. Falsifying jury lists, etc. Every officer or person required by law to certify to the list of persons selected as jurors, who maliciously, corruptly, or willfully certifies to a false or incorrect list, or a list containing other names than those selected, or who, being required by law to write down the names placed on the certified lists on separate pieces of paper, does not write down and place in the jury-box the same names that are on the certified list, and no more and no less than are on such lists, is guilty of a felony. En. February 14, 1872.

## CHAPTER V.

### PERJURY AND SUBORNATION OF PERJURY.

- § 118. Perjury defined.
- § 118a. False affidavits as to affiant's testimony.
- § 119. Oath defined.
- § 120. Oath of office.
- § 121. Irregularity in administering.
- § 122. Incompetency of witness no defense.
- § 123. Knowledge of materiality of testimony not necessary.
- § 124. Deposition, when deemed to be complete.
- § 125. Statement of that which one does not know to be true.
- § 126. Punishment of perjury.
- § 127. Subornation of perjury.
- § 128. Procuring the execution of innocent persons.
- § 129. False return whether oath is taken or not.

§ 118. Perjury defined. Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath states as true any material matter which he knows to be false, is guilty of perjury. En. February 14, 1872.

Cal. Rep. Cit. 54, 528; 59, 374; 59, 379; 63, 63; 64, 271; 103, 427; 111, 658; 113, 75; 117, 682; 120, 132; 120, 134; 120, 135; 122, 680; 131, 260; 133, 368; 136, 392; 137, 264; 137, 266; 146, 115; 146, 117; 146, 118.

See post, sec. 121, as to oaths administered in an irregular manner.



§ 118a. False affidavits as to affiant's testimony. Any person who, in any affidavit taken before any person authorized to administer oaths, swears, affirms, declares, deposes, or certifies that he will testify, declare, depose, or certify before any competent tribunal, officer, or person, in any case then pending or thereafter to be instituted, in any particular manner, or to any particular fact, and in such affidavit willfully and contrary to such oath states as true any material matter which he knows to be false, is guilty of perjury. In any prosecution under this section, the subsequent testimony of such person, in any action involving the matters in such affidavit contained, which is contrary to any of the matters in such affidavit contained, shall be prima facie evidence that the matters in such affidavit were false. En. Stats. 1905, 648.

The object of this new section is to punish those who instigate litigation by making false affidavits respecting the facts to which they will testify, and is made necessary by the decision of the Supreme Court in *People v. Simpton*, 133 Cal. 367.—Code Commissioner's Note.

§ 119. Oath defined. The term "oath," as used in the last two sections, includes an affirmation and every other mode authorized by law of attesting the truth of that which is stated. En. February 14, 1872. Am'd. 1905, 648.

The change consists in the substitution of the words "two sections" for "section." The change is made necessary by the addition of section 118a to the Code.—Code Commissioner's Note.

Cal. Rep. Cit. 133, 370.

Manner of administering oath.—That mode of swearing which the witness believes most obligatory may be adopted. No special form of oath or affirmation is required: Code Civ. Proc., secs. 2093-2097; see also sec. 121, post.

§ 120. Oath of office. So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the two preceding sections. En. February 14, 1872.

Oath of office: See Pol. Code, secs. 904 et seq.

§ 121. Irregularity in administering oath. It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner, or that the person accused of perjury did not go before, or was not in the presence of, the officer purporting to administer the

oath, if such accused caused or procured such officer to certify that the oath had been taken or administered. En. February 14, 1872. Am'd. 1905, 648.

The matter following the word "manner" is new. The object of the amendment is to cut off the defense sometimes successfully made in perjury cases, that the defendant did not in fact go before the officer and take oath, it being at the same time admitted that he sent the affidavit to the officer with the intention that he should certify to it, and with the intention that it should be used as valid.—Code Commissioner's Note.

Cal. Rep. Cit. 64, 271; 118, 80; 131, 256; 139, 601.

§ 122. Incompetency of witness no defense. It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate. En. February 14, 1872.

Cal. Rep. Cit. 64, 271.

§ 123. Knowledge of materiality of testimony not necessary. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding. En. February 14, 1872.

Cal. Rep. Cit. 82, 610.

§ 124. Deposition, when deemed to be complete. The making of a deposition, affidavit or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true. En. February 14, 1872. Am'd. 1905, 648.

The change consists in the addition of the word "affidavit." The purpose is of the same character as that of the amendment to the preceding section.—Code Commissioner's Note.

Cal. Rep. Cit. 117, 682; 118, 51; 137, 221.

§ 125. Statement of that which one does not know to be true. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false. En. February 14, 1872.

Cal. Rep. Cit. 120, 132; 120, 134; 120, 136.

§ 126. **Punishment of perjury.** Perjury is punishable by imprisonment in the state prison not less than one, nor more than fourteen years. En. February 14, 1872.

§ 127. **Subornation of perjury.** Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured. En. February 14, 1872.

§ 128. **Procuring the execution of innocent persons.** Every person who, by willful perjury or subordination of perjury, procures the conviction and execution of any innocent person, is punishable by death. En. February 14, 1872.

§ 129. **False return, whether oath is taken or not.** Every person who, being required by law to make any return, statement, or report, under oath, willfully makes and delivers any such return, statement, or report, purporting to be under oath, knowing the same to be false in any particular, is guilty of perjury, whether such oath was in fact taken or not. En. Stats. 1905, 649.

The object of the section is similar to that of the proposed amendment to section 121. (See *People v. Simpton*, 133 Cal. 367.)—Code Commissioner's Note.

## CHAPTER VI.

### FALSIFYING EVIDENCE.

- § 132. Offering false evidence.
- § 133. Deceiving a witness.
- § 134. Preparing false evidence.
- § 135. Destroying evidence.
- § 136. Preventing or dissuading witness from attending.
- § 137. Bribing witnesses.
- § 138. Receiving or offering to receive bribes.

§ 132. **Offering false evidence.** Every person who, upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged, or fraudulently altered or antedated, is guilty of felony. En. February 14, 1872.

§ 133. **Deceiving a witness.** Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor. En. February 14, 1872.

§ 134. **Preparing false evidence.** Every person guilty of preparing any false or antedated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony. En. February 14, 1872.

§ 135. **Destroying evidence.** Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor. En. February 14, 1872.

§ 136. **Preventing or dissuading witness from attending.** Every person who willfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding, or inquiry, authorized by law, is guilty of a misdemeanor. En. February 14, 1872.

§ 137. **Bribing witnesses.** Every person who gives, or offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any person to give false or withhold true testimony, is guilty of a felony. En. February 14, 1872. Am'd. 1873-4, 425.

Cal. Rep. Cit. 78, 170; 146, 146.

§ 138. **Receiving or offering to receive bribes.** Every person who is a witness, or is about to be called as such, who receives or offers to receive, any bribe, upon any

understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial or proceeding upon which his testimony is required, is guilty of a felony. En. February 14, 1872. Am'd. 1873-4, 425.

## CHAPTER VII.

### OTHER OFFENSES AGAINST PUBLIC JUSTICE.

- § 142. Officer refusing to arrest parties charged with crime.
- § 143. Public administrator, neglect or violation of duty by.
- § 144. Receiving fee for services in arresting fugitives.
- § 145. Delaying to take person arrested before a magistrate.
- § 146. Making arrests, etc., without lawful authority.
- § 147. Inhumanity to prisoners.
- § 148. Resisting public officers.
- § 149. Assault, etc., by officers, under color of authority.
- § 150. Refusing to aid officers in arrest, etc.
- § 151. Taking extra-judicial oaths. (Repealed.)
- § 152. Administering extra-judicial oaths. (Repealed.)
- § 153. Compounding crimes.
- § 154. Debtor fraudulently concealing his property.
- § 155. Defendant fraudulently concealing his property.
- § 156. Fraudulent pretenses relative to birth of infant.
- § 157. Substituting one child for another.
- § 158. Common barratry defined. How punished.
- § 159. What proof is required.
- § 159a. Advertising procuring of divorce.
- § 160. Misconduct by attorneys.
- § 161. Buying demands or suit by an attorney.
- § 161a. Falsely advertising as an attorney.
- § 162. Attorneys forbidden to defend prosecutions carried on by their partners or formerly by themselves.
- § 163. Limitation of preceding section.
- § 164. Grand juror acting after challenge has been allowed.
- § 165. Bribing boards of supervisors, etc.
- § 166. Criminal contempts.
- § 167. False certificates by public officers.
- § 168. Disclosing fact of indictment having been found.
- § 169. Disclosing what transpired before the grand jury.
- § 170. Maliciously procuring search warrant.
- § 171. Unauthorized communication with convict.
- § 171a. Bringing certain drugs or firearms into or near prisons.
- § 171b. Ex-convicts coming upon or near prison grounds.
- § 171c. Tramp, vagrant, etc., coming into prison or upon grounds belonging thereto.
- § 172. Keeping intoxicating liquors within or contiguous to state buildings.
- § 173. Importing foreign convicts.
- § 174. Bringing Chinese into the state.
- § 175. Separate and distinct prosecution.
- § 176. Omission of duty by public officer.
- § 177. Offense for which no penalty is prescribed.
- § 178. Officers of corporations not to employ Chinese. (Repealed.)

§ 179. Corporations not to employ Chinese. (Repealed.)

§ 180. County treasurer receiving money.

§ 180a. Bringing drugs, liquors, firearms, etc., into state's prison. (Repealed.)

§ 181. Infringement of personal liberty or attempt to assume ownership of persons

§ 142. Officer refusing to arrest parties charged with crime. Every sheriff, coroner, keeper of a jail, constable, or other peace officer, who willfully refuses to receive or arrest any person charged with a criminal offense, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years. En. February 14, 1872.

§ 143. Public administrator, neglect or violation of duty by. Every person holding the office of public administrator, who willfully refuses or neglects to perform the duties thereof, or who violates any provision of law relating to his duties or the duties of his office, for which some other punishment is not prescribed, is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding two years, or both. En. February 14, 1872.

§ 144. Receiving fee for services in arresting fugitives. Every person who violates any of the provisions of section one thousand five hundred and fifty-eight is guilty of a misdemeanor. En. February 14, 1872.

The section referred to relates to fees or compensation allowed persons for pursuing and securing the extradition of fugitives from justice.

§ 145. Delaying to take person arrested before a magistrate. Every public officer or other person, having arrested any person upon a criminal charge, who willfully delays to take such person before a magistrate having jurisdiction, to take his examination, is guilty of a misdemeanor. En. February 14, 1872.

§ 146. Making arrests, etc., without lawful authority. Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements, without

a regular process or other lawful authority therefor, is guilty of a misdemeanor. En. February 14, 1872.

§ 147. **Inhumanity to prisoners.** Every officer who is guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by fine not exceeding two thousand dollars, and by removal from office. En. February 14, 1872.

§ 148. **Resisting public officers.** Every person who willfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years. En. February 14, 1872.

Cal. Rep. Cit. 59, 370; 120, 281.

Resisting officers: Sec. 69.

§ 149. **Assault, etc., by officers, under color of authority.** Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years. En. February 14, 1872.

§ 150. **Refusing to aid officers in arrest, etc.** Every male person above eighteen years of age who neglects or refuses to join the posse comitatus or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or by neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge, or justice of the peace, or other officer concerned in the administration of justice, is punishable by fine of not less than fifty nor more than one thousand dollars. En. February 14, 1872.

Act to authorize supervisors to pay expenses of posse comitatus: See post, Appendix, title Supervisors.



§ 151. Taking extra-judicial oaths. (Repealed.) En. February 14, 1872. Rep. Stats. 1873-4, 425.

§ 152. Administering extra-judicial oaths. (Repealed.) En. February 14, 1872. Rep. Stats. 1873-4, 425.

§ 153. Compounding crimes. Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement or promise thereof, upon any agreement or understanding to compound or conceal such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law in which crimes may be compromised by leave of court is punishable as follows:

1. By imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, where the crime was punishable by death or imprisonment in the state prison for life;

2. By imprisonment in the state prison not exceeding three years, or in the county jail not exceeding six months, where the crime was punishable by imprisonment in the state prison for any other term than for life;

3. By imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, where the crime was a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 103, 676; 103, 677.

Compromising certain offenses: Post, secs. 1377-1379.

§ 154. Debtor fraudulently concealing his property. Every debtor who fraudulently removes his property or effects out of this state, or fraudulently sells, conveys, assigns, or conceals his property, with intent to defraud, hinder, or delay his creditors of their rights, claims, or demands, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both. En. February 14, 1872.

Cal. Rep. Cit. 103, 354.

§ 155. Defendant fraudulently concealing his property. Every person against whom an action is pending or against whom a judgment has been rendered for the recovery of any personal property, who fraudulently conceals, sells,



or disposes of such property, with intent to hinder, delay, or defraud the person bringing such action or recovering such judgment, or with such intent removes such property beyond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment, is punishable as provided in the preceding section. En. February 14, 1872.

**§ 156. Fraudulent pretenses relative to birth of infant.** Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate from any person lawfully entitled thereto, is punishable by imprisonment in the state prison not exceeding ten years. En. February 14, 1872.

**§ 157. Substituting one child for another.** Every person to whom an infant has been confided for nursing, education, or any other purpose, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is punishable by imprisonment in the state prison not exceeding seven years. En. February 14, 1872.

**§ 158. Common barratry defined. How punished.** Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six months, and by fine not exceeding five hundred dollars. En. February 14, 1872.

**§ 159. What proof is required.** No person can be convicted of common barratry except upon proof that he has excited suits or proceedings at law in at least three instances, and with a corrupt or malicious intent to vex and annoy. En. February 14, 1872.

**§ 159½.** Number changed to 159a. See § 159a, post.

**§ 159a. Advertising procuring of divorce.** Whoever advertises, prints, publishes, distributes, or circulates, or causes to be advertised, printed, published, distributed, or circulated, any circular, pamphlet, card, handbill, advertisement,

printed paper, book, newspaper, or notice of any kind, offering to procure or obtain, or to aid in procuring or obtaining, any divorce, or the severance, dissolution, or annulment of any marriage, or offering to engage or appear or act as attorney, counsel, or referee in any suit for alimony or divorce, or the severance, dissolution, or annulment of any marriage, either in this state or elsewhere, is guilty of a misdemeanor. This section does not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state. En. Stats. 1891, 279. Am'd. 1893, 48; 1905, 649.

**§ 160. Misconduct by attorneys.** Every attorney who, whether as attorney or as counselor, either:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Willfully delays his client's suit with a view to his own gain; or,

3. Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for;

—is guilty of a misdemeanor. En. February 14, 1872.

Disbarring attorneys: See Code Civ. Proc. sec. 287.

**§ 161. Buying demands or suit by an attorney.** Every attorney who, either directly or indirectly, buys, or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 68, 81; 98, 524; 143, 527.

**§ 161a. Falsely advertising as an attorney.** Any person, other than a regularly licensed attorney, who advertises or holds himself out as practicing or entitled to practice law in any court of record, is guilty of a misdemeanor. En. Stats. 1905, 649.

This section, which is a new one, is self-explanatory.—Code Commissioner's Note.

**§ 162. Attorneys forbidden to defend prosecutions carried on by their partners or formerly by themselves.** Every attorney who, directly or indirectly, advises in relation to, or aids, or promotes the defense of any action or proceed-

ing in any court, the prosecution of which is carried on, aided, or promoted by any person as district attorney, or other public prosecutor, with whom such person is directly or indirectly connected as a partner; or who, having himself prosecuted, or in any manner aided or promoted any action or proceeding in any court as district attorney or other public prosecutor, afterwards, directly or indirectly, advises in relation to or takes any part in, the defense thereof, as attorney or otherwise, or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever having relation to the defense thereof, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, forfeits his license to practice law. En. February 14, 1872.

Cal. Rep. Cit. 69, 59.

§ 163. **Limitation of preceding section.** The preceding section does not prohibit an attorney from defending himself in person, as attorney or counsel, when prosecuted, either civilly or criminally. En. February 14, 1872.

§ 164. **Grand juror acting after challenge has been allowed.** Every grand juror who, with knowledge that a challenge interposed against him by a defendant has been allowed, is present at, or takes part, or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor. En. February 14, 1872.

§ 165. **Bribing boards of supervisors, etc.** Every person who gives or offers a bribe to any member of any common council, board of supervisors, or board of trustees of any county, city and county, city, or public corporation, with intent to corruptly influence such member in his action on any matter or subject pending before, or which is afterward to be considered by, the body of which he is a member, and every member of any of the bodies mentioned in this section who receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter, upon which he may be required to act in his official capacity, is punishable by imprisonment in the

state's prison not less than one nor more than fourteen years, and upon conviction thereof shall, in addition to said punishment, forfeit his office, be disfranchised and forever disqualified from holding any public office or trust. En. February 14, 1872. Am'd. 1905, 650.

The word "public" is inserted before the word "corporation," as the section was undoubtedly intended to apply to bodies and authorities of a public character. The words "of which is afterward to be considered by" are inserted. The words "upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter, upon which he may be required to act in his official capacity," were not in the report of the original Code Commission, but were inserted as a committee amendment two years ago. The added words "in addition to said punishment" were likewise inserted by said committee. The first two changes are code revision; the last two changes are, in a measure, new legislation, but we think them good.—Code Commissioner's Note.

Cal. Rep. Cit. 93, 631; 110, 372; 110, 374.

§ 166. Criminal contempts. Every person guilty of any contempt of court, of either of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority;

2. Behavior of the like character committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law;

3. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court;

4. Willful disobedience of any process or order lawfully issued by any court;

5. Resistance willfully offered by any person to the lawful order or process of any court;

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question;

7. The publication of a false or grossly inaccurate report of the proceedings of any court;

8. Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of such court, any affidavit, or testimony, or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon such prisoner, except as provided in this code. En. February 14, 1872.

Cal. Rep. Cit. 64, 438; 69, 543; 99, 361.

Contempt punishable as a crime: Post, sec. 657.

Contempts.—Power of court to punish: Code Civ. Proc., secs. 128, 177, 178.

§ 167. False certificates by public officers. Every public officer authorized by law to make or give any certificate or other writing, who makes and delivers as true any such certificate or writing, containing statements which he knows to be false, is guilty of a misdemeanor. En. February 14, 1872.

§ 168. Disclosing fact of indictment having been found. Every grand juror, district attorney, clerk, judge or other officer who, except by issuing or in executing a warrant of arrest, willfully discloses the fact of an information or indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 650.

"Presentment" is stricken out and "information" inserted in its place, for the reason that under the Constitution of 1879 there is no prosecution by presentment, that portion of this section (originally passed in 1872) having been superseded by the Constitution.—Code Commissioner's Note.

Cal. Rep. Cit. 63, 424.

§ 169. Disclosing what transpired before the grand jury. Every grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which he himself, or any other member of the grand jury, may have said, or in what manner he or any other grand juror may have voted on a matter before them, is guilty of a misdemeanor. En. February 14, 1872.

§ 170. Maliciously procuring search warrant. Every person who maliciously and without probable cause procures a search warrant or warrant of arrest to be issued and

executed, is guilty of a misdemeanor. En. February 14, 1872.

§ 171. **Unauthorized communication with convict.** Every person, not authorized by law, who, without the permission of the warden or other officer in charge of any state prison, jail, or reformatory in this state, communicates with any convict or person detained therein, or brings therein or takes therefrom any letter, writing, literature, or reading matter to or from any convict or person confined therein, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 651.

The scope of the section is broadened by the insertion of the words "jail or reformatory in this state," and the words "literature or reading matter."—Code Commissioner's Note.

§ 171a. **Bringing certain drugs or firearms into or near prisons.** Any person, not authorized by law, who brings into any state prison, jail, or reformatory in this state, or within the grounds belonging or adjacent to any such institution, any opium, morphine, cocaine, or other narcotic, or any intoxicating liquor of any kind whatever, or any firearms, weapons or explosives of any kind, is guilty of a felony. En. Stats. 1905, 651.

171a, 171b, 17c, 180a. Sections 171a, 171b, 171c contain the matter now contained in section 180a, and also a codification of the provisions of the statute of 1895, page 92.—Code Commissioner's Note.

§ 171b. **Ex-convicts coming upon or near prison grounds.** Every person who, having been previously convicted of a felony and confined in any state prison in this state, without the consent of the warden or other officer in charge of any state prison or reformatory in this state, comes upon the grounds of any such institution, or lands belonging or adjacent thereto, in the night-time, is guilty of a felony. En. Stats. 1905, 651.

See note to § 171a, ante.

§ 171c. **Tramp, vagrant, etc., coming into prison or upon grounds belonging thereto.** Any tramp, vagrant, or person who is a known associate of thieves, who comes into any state reformatory in this state, or upon the grounds belonging or adjacent thereto, and communicates with any of the inmates of such institution, without the consent of the superintendent or other person having charge thereof, or who visits or communicates with any paroled pupil or inmate of

**172.** Every person who, within half a mile of the land belonging to this state upon which any state prison, or within nineteen hundred feet of the land belonging to this state upon which any reformatory, is situated, or within one mile of the grounds belonging to the University of California at Berkeley, or within one and one-half miles of the lands occupied by any home, retreat, or asylum for disabled volunteer soldiers or sailors, established or to be established by this state, or by the United States within this state, or within the State Capitol or within the limits of the grounds adjacent and belonging thereto sells, gives away, or exposes for sale, any vinous or alcoholic liquors, is guilty of a misdemeanor. (In effect March 6, 1907.)





such institution, with a view to induce him to violate the conditions of his parole, or who induces such paroled pupil or inmate to leave the guardian under whom he has been placed by the superintendent or other head of such institution, is guilty of a misdemeanor. En. Stats. 1905, 651.

See note to § 171a, ante.

**§ 172. Keeping intoxicating liquors within or contiguous to state buildings.** Every person who, within two miles of the land belonging to this state upon which any state prison or reformatory is situated, or within one mile of the grounds belonging and adjacent to the University of California, or within one and one half miles of the lands occupied by any home, retreat, or asylum for disabled volunteer soldiers or sailors established or to be established by this state or by the United States within this state, or within the state capitol, or within the limits of the grounds adjacent and belonging thereto, sells, gives away, or exposes for sale, any vinuous or alcoholic liquors, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1875-6, 109; 1905, 652.

The amendment consolidates the provisions of the present section 172 with a codification of the statutes of 1873-4, page 12; 1880, page 80 and 1895, page 161, relating to the state university, soldiers' homes and state capitol. There is no new legislation in the section.—Code Commissioner's Note.

Cal. Rep. Cit. 61, 437.

Act to prevent sale of liquors near Soldiers' Home: See post, Appendix, title Intoxicating Liquors.

Act to prohibit sale of intoxicants in state capitol: See post, Appendix, title Intoxicating Liquors.

Act to prohibit sale of intoxicants near state university: See post, Appendix, title Intoxicating Liquors.

**§ 173. Importing foreign convicts.** Every captain, master of a vessel, or other person, who willfully imports, brings, or sends, or causes or procures to be brought or sent into this state, any person who is a foreign convict of any crime which, if committed within this state, would be punishable therein, (treason and misprision of treason excepted) or who is delivered or sent to him from any prison or place of confinement in any place without this state, is guilty of a misdemeanor. En. February 14, 1872.

**§ 174. Bringing Chinese into the state.** Every person bringing to or landing within this state any person born

either in the empire of China or Japan, or the islands adjacent to the empire of China, without first presenting to the commissioner of immigration evidence satisfactory to such commissioner that such person desires voluntarily to come into this state, and is a person of good character, and obtaining from such commissioner a permit describing such person and authorizing the landing, is punishable by a fine of not less than one nor more than five thousand dollars, or by imprisonment in the county jail not less than two nor more than twelve months. En. February 14, 1872.

§ 175. **Separate and distinct prosecution.** Every individual person of the classes referred to in the two preceding sections, brought to or landed within this state contrary to the provisions of such sections, renders the person bringing or landing liable to a separate prosecution and penalty. En. February 14, 1872.

§ 176. **Omission of duty by public officer.** Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 47, 130; 47, 131; 84, 310.

§ 177. **Offense for which no penalty is prescribed.** When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor. En. February 14, 1872. Am'd. 1873-4, 426.

Cal. Rep. Cit. 62, 310.

§ 178. **Officers of corporations not to employ Chinese.** En. Stats. 1880, 1. Rep. 1905, 652.

178, 179. These sections were, in the Circuit Court of the United States, Ninth Judicial District, explicitly held to be in violation of

the Constitution of the United States, on May 22, 1880. (In re Parrott, 5 Pac. Coast L. J. 161.) They are now obsolete. An ordinance in somewhat similar terms was also held unconstitutional in *Ex Parte Kerboch*, 85 Cal. 274.—Code Commissioner's Note.

**§ 179. Corporations not to employ Chinese.** En. Stats. 1880, 2. Rep. 1905, 652.

See note to § 178, ante.

**§ 180. County treasurer receiving money.** Any county treasurer who shall accept, or allow, any deposit in the county treasury of moneys, from any private and unofficial source, is guilty of misdemeanor, and shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or by a fine of not less than five hundred dollars and not more than five thousand dollars, or both such fine and imprisonment in the discretion of the court, and, in addition thereto, shall forfeit his office. En. Stats. 1897, 56.

**§180a. Bringing drugs, liquors, firearms, etc., into State's prison; repealed.** En. Stats. 1899, 4. Am'd. 1901, 107. Rep. 1905, 652.

See note to § 171a, ante.

**§ 181. Infringement of personal liberty or attempt to assume ownership of persons.** Every person who holds, or attempts to hold, any person in involuntary servitude, or assumes, or attempts to assume, rights of ownership over any person, or who sells, or attempts to sell, any person to another, or receives money or anything of value, in consideration of placing any person in the custody, or under the power or control of another, or who buys, or attempts to buy, any person, or pays money, or delivers anything of value, to another, in consideration of having any person placed in his custody, or under his power or control, or who knowingly aids or assists in any manner any one thus offending, is punishable by imprisonment in the

state prison not less than one nor more than ten years. En. 1901, 330.

Cal. Rep. Cit. 84, 472.

## CHAPTER VIII.

### CONSPIRACY.

§ 182. Criminal conspiracy defined and punishment fixed.

§ 183. No other conspiracies punishable criminally.

§ 184. Overt act, when necessary.

§ 185. Wearing mask or disguise.

§ 182. Criminal conspiracy defined and punishment fixed.  
If two or more persons conspire—

1. To commit any crime;
  2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime;
  3. Falsely to move or maintain any suit, action, or proceeding;
  4. To cheat and defraud any person of any property by any means which are in themselves criminal, or to obtain money or property by false pretenses; or,
  5. To commit any act injurious to the public health, to public morals, or for the perversion or obstruction of justice or due administration of the laws;
- they are punishable by imprisonment in the county jail not exceeding one year or by fine not exceeding one thousand dollars, or both. En. February 14, 1872. Am'd. 1873-4, 426.

Cal. Rep. Cit. 105, 263; 118, 460.

Evidence on trial for conspiracy: See post, sec. 1104.

§ 183. No other conspiracies punishable criminally. No conspiracies, other than those enumerated in the preceding section, are punishable criminally. En. February 14, 1872.

§ 184. **Overt act, when necessary.** No agreement, except to commit a felony upon the person of another, or to commit arson, or burglary, amounts to a conspiracy, unless some act, beside such agreement, be done to effect the object thereof, by one or more of the parties to such agreement. En. February 14, 1872.

Cal. Rep. Cit. 105, 264.

§ 185. **Wearing mask or disguise.** It shall be unlawful for any person to wear any mask, false whiskers, or any personal disguise (whether complete or partial) for the purpose of—

1. Evading or escaping discovery, recognition, or identification in the commission of any public offense;

2. Concealment, flight, or escape, when charged with, arrested for, or convicted of, any public offense. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor. En. 1873-4, 426.

Pen. Code—7

## TITLE VIII.

## OF CRIMES AGAINST THE PERSON.

Chapter I. Homicide, §§ 187-199.

II. Mayhem, §§ 203, 204.

III. Kidnaping, §§ 207-209.

IV. Robbery, §§ 211-214.

V. Attempts to Kill, §§ 216-219.

VI. Assaults with Intent to Commit Felony, other than Assaults with Intent to Murder, §§ 220-222.

VII. Duels and Challenges, §§ 225-232.

VIII. False Imprisonment, §§ 236, 237.

IX. Assault and Battery, §§ 240-246.

X. Libel, §§ 248-259.

## CHAPTER I.

## HOMICIDE.

- § 187. Murder defined.
- § 188. Malice defined.
- § 189. Degrees of murder.
- § 190. Punishment of murder.
- § 191. Petit treason abolished.
- § 192. Manslaughter—voluntary and involuntary.
- § 193. Punishment of manslaughter.
- § 194. Deceased must die within a year and a day.
- § 195. Excusable homicide.
- § 196. Justifiable homicide by public officers.
- § 197. Justifiable homicide by other persons.
- § 198. Bare fear not to justify killing.
- § 199. Justifiable and excusable homicide not punishable.

§ 187. **Murder defined.** Murder is the unlawful killing of a human being, with malice aforethought. En. February 14, 1872.

Cal. Rep. Cit. 58, 268; 58, 269; 63, 28; 63, 166; 63, 424; 65, 212; 65, 235; 68, 362; 86, 240; 99, 3; 122, 141; 137, 591; 137, 592; 142, 341; 142, 356; 145, 170; 145, 171.

Degrees of murder; Post, sec. 189.

§ 188. **Malice defined.** Such malice may be expressed or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow-creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. En. February 14, 1872.

Cal. Rep. Cit. 58, 268; 58, 269; 65, 235; 71, 3; 71, 6; 72, 613; 76, 285; 93, 566; 120, 202; 122, 141; 123, 305; 135, 348; 139, 164; 145, 170.

Malice express or implied: See ante, sec. 7, subd. 4.

§ 189. **Degrees of murder.**...All murder which is perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, is murder of the first degree; and all other kinds of murders are of the second degree. En. February 14, 1872. Am'd. 1873-4, 427.

Cal. Rep. Cit. 57, 94; 58, 268; 58, 269; 59, 601; 63, 424; 99, 3; 121, 347; 122, 141; 141, 231; 145, 170; 147, 273. 71, 6; 76, 285; 80, 125; 81, 567; 86, 240; 88, 271.

The indictment: See post, sec. 959.

Burden of proving justification or excuse: See post, sec. 1105.

§ 190. **Punishment of murder.** Every person guilty of murder in the first degree shall suffer death, or confinement in the state prison for life, at the discretion of the jury trying the same; or, upon a plea of guilty, the court shall determine the same; and every person guilty of murder in the second degree is punishable by imprisonment in the state prison not less than ten years. En. February 14, 1872. Am'd. 1873-4, 457.

Cal. Rep. Cit. 49, 178; 49, 185; 58, 268; 58, 269; 59, 357; 59, 432; 63, 170; 67, 114; 69, 176; 69, 177; 69, 179; 90, 197; 105, 495; 129, 551; 134, 258.

Death penalty, how executed.—Whenever, in a proper case, the judgment of the court directs the death of the defendant, the punishment in this state is inflicted, “by hanging the defendant by the neck until he is dead.” Post, secs. 1228, 1229.

Punishment for life: See post, § 671.

§ 191. **Petit treason abolished.** The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are homicides, punishable in the manner prescribed by this chapter. En. February 14, 1872.

§ 192. **Manslaughter—voluntary and involuntary.** Manslaughter is the unlawful killing of a human being, without malice. It is of two kinds:

1. Voluntary—upon a sudden quarrel or heat of passion.

2. Involuntary—in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. En. February 14, 1872.

Cal. Rep. Cit. 58, 268; 58, 269; 65, 212; 72, 620; 80, 125; 118, 156; 145, 721. Subd. 2—129, 552.

§ 193. **Punishment of manslaughter.** Manslaughter is punishable by imprisonment in the state prison not exceeding ten years. En. February 14, 1872.

§ 194. **Deceased must die within a year and a day.** To make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered; in



the computation of which the whole of the day on which the act was done shall be reckoned the first. En. February 14, 1872.

Cal. Rep. Cit. 58, 268; 58, 269.

§ 195. **Excusable homicide.** Homicide is excusable in the following cases:

1. When committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.

2. When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner. En. February 14, 1872.

Cal. Rep. Cit. 49, 428; 58, 268; 58, 269; 80, 165.

Burden of proving homicide excusable: Post, sec. 1105.

§ 196. **Justifiable homicide by public officers.** Homicide is justifiable when committed by public officers, and those acting by their command in their aid and assistance, either—

1. In obedience to any judgment of a competent court; or,

2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,

3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest. En. February 14, 1872.

Cal. Rep. Cit. 58, 268; 58, 269.

As to escapes: See ante, sec. 105.

Burden of proving homicide justifiable: Post, sec. 1105.

§ 197. **Justifiable homicide by other persons.** Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,

2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,

3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace. En. February 14, 1872.

Cal. Rep. Cit. 58, 268; 58, 269; 60, 74; 61, 187; 61, 546; 65, 133; 65, 134; 67, 649; 82, 40; 93, 488; 106, 631; 133, 160; 141, 239. Subd. 1—118, 443. Subd. 2—89, 170; 109, 461; 111, 626; 117, 196. Subd. 3—58, 250; 67, 650; 70, 523; 74, 645; 93, 488; 117, 190; 118, 269.

Burden of proving homicide justifiable: See post, sec. 1105.

Defense of habitation: See post, sec. 198.

Lawful resistances, by whom and when may be made: See post, secs. 692-694.

Duty to assist in arrest of felon: See post, sec. 837.

§ 198. **Bare fear not to justify killing.** A bare fear of the commission of any of the offenses mentioned in subdivisions two and three of the preceding section, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone. En. February 14, 1872.

Cal. Rep. Cit. 58, 268; 58, 269; 61, 546; 65, 233; 118, 443.

§ 199. **Justifiable and excusable homicide not punishable.** The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged. En. February 14, 1872.

## CHAPTER II.

### MAYHEM.

§ 203. Mayhem defined.

§ 204. Mayhem, how punishable.

§ 203. **Mayhem defined.** Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem. En. February 14, 1872. Am'd. 1873-4, 427.

Cal. Rep. Cit. 62, 542; 93, 565; 93, 567; 105, 673.

§ 204. **Mayhem, how punishable.** Mayhem is punishable by imprisonment in the state prison not exceeding fourteen years. En. February 14, 1872.

## CHAPTER III.

## KIDNAPING.

§ 207. Kidnaping defined.

§ 208. Punishment of kidnaping.

§ 209. Penalty for kidnaping.

§ 207. **Kidnaping defined.** Every person who forcibly steals, takes, or arrests any person in this state, and carries him into another country, state, or county, or into another part of the same county, or who forcibly takes or arrests any person, with a design to take him out of this state, without having established a claim, according to the laws of the United States, or of this state, or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of this state, or to be taken or removed therefrom, for the purpose and with the intent to sell such person into slavery or involuntary servitude, or otherwise to employ him for his own use, or to the use of another, without the free will and consent of such persuaded person; and every person who, being out of this state, abducts or takes by force or fraud any person contrary to the law of the place where such act is committed, and brings, sends, or conveys such person within the limits of this state, and is afterwards found within the limits thereof, is guilty of kidnaping. En. February 14, 1872. Am'd. 1905, 653.

Two amendments: inserting the words "or into another part of the same county," and inserting beginning with the word "and" and ending with the word "thereof." The advisability of the first change is shown by the decision of the Supreme Court in *Ex parte Keil*, 85 Cal. 309, where it was held that the forcible removal of a person from San Pedro, Los Angeles county, to Santa Catalina island, in the same county, did not constitute kidnaping. These changes are asked for by the District Attorneys' Association.—Code Commissioner's Note.

Cal. Rep. Cit. 85, 310; 89, 150.

§ 208. **Punishment of kidnaping.** Kidnaping is punishable by imprisonment in the state prison not less than one nor more than ten years. En. February 14, 1872.

§ 209. **Penalty for kidnaping.** Every person who maliciously, forcibly, or fraudulently takes or entices away

any person with intent to restrain such person and thereby to commit extortion or robbery, or exact from the relatives or friends of such person any money or valuable thing, is guilty of a felony, and shall be punished therefor by imprisonment in the state's prison for life, or any number of years not less than ten. En. Stats. 1901, 98.

## CHAPTER IV.

### ROBBERY.

§ 211. Robbery defined.

§ 212. What fear may be an element in robbery.

§ 213. Punishment of robbery.

§ 214. Going on trains, or doing any act thereon, for purpose of robbery.

§ 211. **Robbery defined.** Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence and against his will, accomplished by means of force or fear. En. February 14, 1872.

Cal. Rep. Cit. 53, 59; 56, 80; 59, 439; 67, 422; 75, 99; 80, 207; 100, 439; 116, 586; 118, 26; 141, 490; 141, 491; 141, 492; 146, 143.

§ 212. **What fear may be an element in robbery.** The fear mentioned in the last section may be either—

1. The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his, or member of his family; or,

2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed at the time of the robbery. En. February 14, 1872. Am'd. 1873-4, 427.

Cal. Rep. Cit. 146, 143.

§ 213. **Punishment of robbery.** Robbery is punishable by imprisonment in the state's prison not less than one year. En. February 14, 1872.

Cal. Rep. Cit. 59, 441; 60, 110; 61, 137; 69, 605; 118, 93; 138, 161.

§ 214. **Going upon trains, or doing any act thereof, for the purpose of.** Every person who goes upon or boards any

railroad train, car or engine, with the intention of robbing any passenger or other person on such train, car or engine, of any personal property thereon in the possession or care or under the control of any such passenger or other person, or who interferes in any manner with any switch, rail, sleeper, viaduct, culvert, embankment, structure or appliance pertaining to or connected with any railroad, or places any dynamite or other explosive substance or material upon or near the track of any railroad, or who sets fire to any railroad bridge or trestle, or who shows, masks, extinguishes or alters any light or other signal, or exhibits or compels any other person to exhibit any false light or signal, or who stops any such train, car or engine, or slackens the speed thereof, or who compels or attempts to compel any person in charge or control thereof to stop any such train, car or engine, or slacken the speed thereof, with the intention of robbing any passenger or other person on such train, car or engine, of any personal property thereon in the possession or charge or under the control of any such passenger or other person, is guilty of a felony. En. Stats. 1905, 653.

214, 218, 219. Section 218 has been broken up into three sections.

In view of the criticism passed by the Supreme Court in the case of *People v. Thompson*, 111 Cal. 242, upon section 218, and the suggestion of that court that the section be revised, there have been taken out of that section the provisions regarding robbery and the same have been amplified and made a new section, numbered 214, to be placed in Chapter IV, of Title VII, of Part I. In the new section the punishment is not prescribed as death or imprisonment for life at the option of the jury, as in section 218; but the grade of the offense is fixed at felony simply, it having been found that the severity of the punishment results in failure to secure convictions.

Section 218 as amended provides only for attempted wrecking or derailment of railroad trains, and fixes the grade of the offense as felony simply, the matters formerly in the section regarding an accomplished or consummated wrecking or derailment being left to section 219, and the provisions regarding robbery being provided for in section 214.

Section 219 contains the matter now in section 218 regarding an accomplished or consummated wrecking or derailment. The punishment is left at death or imprisonment for life, at the option of the jury, as now provided in section 218.

In short, these three sections split up section 218 in the manner suggested by Judge Garoutte in *People v. Thompson*, 111 Cal. 242, and modify the penalty of train-wrecking where no death has occurred, so as to preclude failures to convict on account of the severity of the penalty.—Code Commissioner's Note.

## CHAPTER V.

## ATTEMPTS TO KILL.

§ 216. Administering poison.

§ 217. Assault with intent to commit murder.

§ 218. Train-wrecking, intention of, punishment for.

§ 219. Railroad trains, when wrecked; punishment.

§ 216. **Administering poison.** Every person who, with intent to kill, administers, or causes or procures to be administered, to another, any poison or other noxious or destructive substance or liquid, but by which death is not caused, is punishable by imprisonment in the state prison not less than ten years. En. February 14, 1872.

Cal. Rep. Cit. 53, 148; 54, 54.

Administering stupefying drugs: Post, sec. 222.

§ 217. **Assault with intent to commit murder.** Every person who assaults another with intent to commit murder, is punishable by imprisonment in the state prison not less than one nor more than fourteen years. En. February 14, 1872,

Cal. Rep. Cit. 80, 44; 99, 232.

Assault with intent to commit other felonies: Post, sec. 221.

Assault with deadly weapon: Post, sec. 245.

§ 218. **Train-wrecking, intention of, punishment for.** Every person who unlawfully throws out a switch, removes a rail, or places any obstruction on any railroad with the intention of derailing any passenger, freight or other train, car or engine, or who unlawfully places any dynamite or other explosive material or any other obstruction upon or near the track of any railroad with the intention of blowing up or derailing any such train, car or engine, or who unlawfully sets fire to any railroad bridge or trestle, over which any such train, car or engine must pass, with the intention of wrecking such train, car or engine, is guilty of a felony. En. Stats. 1891, 283. Am'd. 1905, 654.

See note to § 214, ante.

**§ 219. Railroad trains, when wrecked; punishment.** Every person who unlawfully throws out a switch, removes a rail, or places any obstruction on any railroad with the intention of derailing any passenger, freight or other train, car or engine and thus derails the same, or who unlawfully places any dynamite or other explosive material or any other obstruction upon or near the track of any railroad with the intention of blowing up or derailing any such train, car or engine and thus blows up or derails the same, or who unlawfully sets fire to any railroad bridge or trestle over which any such train, car or engine must pass with the intention of wrecking such train, car or engine, and thus wrecks the same, is guilty of a felony and punishable with death or imprisonment in the state prison for life at the option of the jury trying the case. En. Stats. 1905, 655.

See note to § 214, ante.

Cal. Rep. Cit. 111, 244.

## CHAPTER VI.

### ASSAULTS WITH INTENT TO COMMIT FELONY, OTHER THAN ASSAULTS WITH INTENT TO MURDER.

§ 220. Assault with intent to commit rape.

§ 221. Other assaults.

§ 222. Administering stupefying drugs.

**§ 220. Assault with intent to commit rape.** Every person who assaults another with intent to commit rape, the infamous crime against nature, mayhem, robbery, or grand larceny, is punishable by imprisonment in the state prison, not less than one nor more than fourteen years. En. February 14, 1872.

Cal. Rep. Cit. 53, 629; 65, 299; 93, 583; 98, 128; 106, 214; 109, 276; 119, 386; 136, 524; 143, 634.

Rape: See post, sec. 261.

**§ 221. Other assaults.** Every person who is guilty of an assault, with intent to commit any felony, except an



assault with intent to commit murder, the punishment for which assault is not prescribed by the preceding section is punishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both. En. February 14, 1872. -

Cal. Rep. Cit. 61, 622.

Assault generally: Post, sec. 240.

Assault to murder: Ante, sec. 217.

Assault to commit rape: Ante, sec. 220.

Assault with deadly weapon: Post, sec. 245.

§ 222. Administering stupefying drugs. Every person guilty of administering to another any chloroform, ether, laudanum, or other narcotic, anaesthetic, or intoxicating agent, with intent thereby to enable or assist himself or any other person to commit a felony, is guilty of felony. En. February 14, 1872.

Administering poison: Ante, sec. 216.

## CHAPTER VII.

### DUELS AND CHALLENGES.

§ 225. Duel defined.

§ 226. Punishment for fighting a duel, when death ensues.

§ 227. Punishment for fighting a duel, although death does not ensue.

§ 228. Persons fighting duels, etc., disqualified from holding office, etc.

§ 229. Posting for not fighting.

§ 230. Duties of officers to prevent duels.

§ 231. Leaving the state with intent to evade laws against duelling.

§ 232. Witness' privilege.

§ 225. <sup>\*</sup>Duel defined. A duel is any combat with deadly weapons, fought between two or more persons by previous agreement or upon a previous quarrel. En. February 14, 1872.

§ 226. Punishment for fighting a duel, when death ensues. Every person guilty of fighting any duel, from which death ensues within a year and a day, is punishable by

imprisonment in the state prison not less than one nor more than seven years. En. February 14, 1872.

§ 227. Punishment for fighting a duel, although death does not ensue. Every person who fights a duel, or who sends or accepts a challenge to fight a duel, is punishable by imprisonment in the state prison or in a county jail not exceeding one year. En. February 14, 1872. Am'd. 1873-4, 428.

§ 228. Persons fighting duels, etc., disqualified from holding office, etc. Any citizen of this state who shall fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this state or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage, and shall be declared so disqualified in the judgment, upon conviction. En. February 14, 1872. Am'd. 1873-4, 428; 1880, 8.

Disqualifications: See Const. Cal., art. XX, sec. 2.

Remedies by action for injuries arising from dueling: See Civ. Code, secs. 3347, 3348.

§ 229. Posting for not fighting. Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written, or printed, to or concerning another, for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor. En. February 14, 1872.

§ 230. Duties of officers to prevent duels. Every judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, who has knowledge of the intention on the part of any persons to fight a duel, and who does not exert his official authority to arrest the party and pre-

vent the duel, is punishable by fine not exceeding one thousand dollars. En. February 14, 1872.

§ 231. Leaving the state with intent to evade laws against dueling. Every person who leaves this state with intent to evade any of the provisions of this chapter, and to commit any act out of this state such as is prohibited by this chapter, and who does any act, although out of this state, which would be punishable by such provisions if committed within this state, is punishable in the same manner as he would have been in case such act had been committed within this state. En. February 14, 1872.

§ 232. Witness's privilege. No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding. En. February 14, 1872.

## CHAPTER VIII.

### FALSE IMPRISONMENT.

§ 236. False imprisonment defined.

§ 237. False imprisonment, how punished.

§ 236. False imprisonment defined. False imprisonment is the unlawful violation of the personal liberty of another. En. February 14, 1872.

Cal. Rep. Cit. 73, 256; 77, 570; 77, 571; 85, 312.

Reconfining person discharged on habeas corpus: Post, sec. 363.

§ 237. False imprisonment, how punished. False imprisonment is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not more than one year, or by both. If such false imprison-

ment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment in the state prison for not less than one nor more than ten years. En. February 14, 1872. Am'd. 1901, 53.

Cal. Rep. Cit. 85, 312.

## CHAPTER IX.

### ASSAULT AND BATTERY.

§ 240. Assault defined.

§ 241. Assault, how punished.

§ 242. Battery defined.

§ 243. Battery, how punished.

§ 244. Assaults with caustic chemicals.

§ 245. Assaults with deadly weapons.

§ 246. Death penalty for assault by life convict.

§ 240. **Assault defined.** An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. En. February 14, 1872.

Cal. Rep. Cit. 59, 630; 61, 621; 65, 212; 66, 367; 69, 604; 70, 468; 77, 636; 119, 385; 119, 386; 145, 140.

§ 241. **Assault, how punished.** An assault is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months. En. February 14, 1872.

Cal. Rep. Cit. 61, 622; 71, 624; 88, 580.

Assault with deadly weapon: Post, sec. 245.

Assault with intent to commit rape or crime against nature: Ante, sec. 220.

Assault with intent to rob, to commit mayhem, or grand larceny: See ante, sec. 220.

Assault to murder: See ante, sec. 217.

Jurisdiction of police court over assault: See Pol. Code, sec. 4426.

§ 242. **Battery defined.** A battery is any willful and unlawful use of force or violence upon the person of another. En. February 14, 1872.

Cal. Rep. Cit. 61, 622; 65, 213.

§ 243. **Battery, how punished.** A battery is punishable by fine of not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both. En. February 14, 1872. Am'd. 1873-4, 428; 1875-6, 110; 1881, 11.

Cal. Rep. Cit. 60, 438; 61, 622; 65, 156; 65, 213.

§ 244. **Assaults with caustic chemicals.** Every person who willfully and maliciously places or throws, or causes to be placed or thrown, upon the person of another, any vitriol, corrosive acid, or caustic chemical of any nature, with the intent to injure the flesh or disfigure the body of such person, is punishable by imprisonment in the state prison not less than one nor more than fourteen years. En. February 14, 1872.

Cal. Rep. Cit. 106, 140.

§ 245. **Assaults with deadly weapons.** Every person who commits an assault upon the person of another with a deadly weapon or instrument, or by any means or force likely to produce great bodily injury, is punishable by imprisonment in the state prison, or in a county jail, not exceeding two years, or by fine not exceeding five thousand dollars, or by both. En. February 14, 1872. Am'd. 1873-4, 428.

Cal. Rep. Cit. 53, 428; 61, 488; 61, 622; 64, 342; 65, 213; 65, 475; 65, 541; 65, 542; 70, 2; 78, 305; 81, 119; 81, 651; 99, 232; 116, 686; 118, 389; 125, 343; 125, 344; 126, 681; 141, 582.

§ 246. **Death penalty for assault by life convict.** Every person undergoing a life sentence in a state prison of this state, who, with malice aforethought, commits an assault upon the person of another with a deadly weapon or instrument, or by any means or force likely to produce great bodily injury, is punishable with death. En. Stats. 1901, 6.

## CHAPTER X.

## LIBEL.

- § 248. Libel defined.
- § 249. Punishment of libel.
- § 250. Malice presumed.
- § 251. Truth may be given in evidence. Jury to determine law and fact.
- § 252. Publication defined.
- § 253. Liability of editors and publishers.
- § 254. True report of public official proceedings privileged.
- § 255. Extent of privilege.
- § 256. Other privileged communications.
- § 257. Threatening to publish libel. Offer to prevent.
- § 258. Cartoon or caricature, publication of.
- § 259. Newspaper articles to be signed.

§ 248. Libel defined. A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural or alleged defects of one who is alive, and thereby to expose him to public hatred, contempt, or ridicule. En. February 14, 1872. Am'd. 1873-4, 428.

Cal. Rep. Cit. 73, 122; 139, 119.

Libel defined: See Civ. Code, sec. 45.

§ 249. Punishment of libel. Every person who willfully and with a malicious intent to injure another, publishes or procures to be published any libel, is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding one year. En. February 14, 1872.

§ 250. Malice presumed. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown. En. February 14, 1872.

Malice defined: See ante, sec. 7, subd. 4.

§ 251. Truth may be given in evidence. Jury to determine law and fact. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if

it appears to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. The jury have the right to determine the law and the fact. En. February 14, 1872.

Constitutional provision is the same: Art. I, sec. 9.

§ 252. **Publication defined.** To sustain a charge of publishing a libel, it is not needful that the words or things complained of should have been read or seen by another. It is enough that the accused knowingly parted with the immediate custody of the libel, under circumstances which exposed it to be read or seen by any other person than himself. En. February 14, 1872.

Cal. Rep. Cit. 122, 93; 122, 94.

§ 253. **Liability of editors and publishers.** Each author, editor, and proprietor of any book, newspaper, or serial publication, is chargeable with the publication of any words contained in any part of such book, or number of such newspaper or serial. En. February 14, 1872.

See Const. Cal., art. I, sec. 9.

§ 254. **True report of public official proceedings privileged.** No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall not be implied from the mere fact of publication. En. February 14, 1872.

§ 255. **Extent of privilege.** Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of their being so connected. En. February 14, 1872.

§ 256. **Other privileged communications.** A communication made to a person interested in the communication, by one who was also interested or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is a privileged communication. En. February 14, 1872.

§ 257. **Threatening to publish libel. Offer to prevent.** Every person who threatens another to publish a libel concerning him, or any parent, husband, wife, or child of such person, or member of his family, and every person who offers to prevent the publication of any libel upon another person, with intent to extort any money or other valuable consideration from any person, is guilty of a misdemeanor. En. February 14, 1872.

§ 258. **Cartoon or caricature, publication of.** It shall be unlawful to publish in any newspaper, handbill, poster, book or serial publication, or supplement thereto, the portrait of any living person a resident of California other than that of a person holding a public office in this state, without the written consent of such person first had and obtained; provided, that it shall be lawful to publish the portrait of a person convicted of a crime. It shall likewise be unlawful to publish in any newspaper, handbill, poster, book or serial publication or supplement thereto, any caricature of any person residing in this state, which caricature will in any manner reflect upon the honor, integrity, manhood, virtue, reputation, or business or political motives of the person so caricatured, or which tends to expose the individual so caricatured to public hatred, ridicule or contempt. A violation of this section shall be a misdemeanor, and shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment. All persons concerned in said publica-



tion, either as owner or manager, editor, or publisher, or engraver, are each liable for said publication. Actions for the violation of this section shall be tried in the county where such newspaper, handbill, poster, book, or serial publication or supplement is printed or has its publication office, or in the county where the person whose portrait or caricature is published resides at the time of the alleged publication. En. Stats. 1899, 28.

§ 259. Newspaper articles to be signed. Every article, statement, or editorial, contained in any newspaper or other printed publication, printed or published in this state, which by writing or printing tends to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural or alleged defects of one who is alive, and thereby expose him or her to public hatred, contempt or ridicule, must be supplemented by the true name of the writer of such article, statement, or editorial, signed or printed at the end thereof. Any owner, proprietor or publisher of any newspaper or other printed publication printed or published in this state who shall publish any such article, statement, or editorial in any printed publication, printed or published in this state, which is not so supplemented by the true name of the writer thereof, signed or printed at the end thereof as required by this section, shall forfeit the sum of one thousand dollars for each and every article, statement, or editorial so published in violation of the requirements of this section, which said sum so forfeited may be sued for and recovered against any such owner, publisher, or proprietor so violating this section, in a civil action by and in the name of any person who may bring action therefor, one half of the recovery to be paid into the treasury of this state by the plaintiff and the other half to be retained by the plaintiff in such action. If, in any such action, it shall appear by affidavit to the satisfaction of the court where such action is commenced that a defendant has made a

publication in violation of this section within this state, and that after due diligence such defendant cannot be found within this state, or is a foreign corporation, the court must direct an attachment in such action to issue against the property of such defendant, and thereupon such attachment shall issue and be executed as in other cases where by law an attachment is provided for. Where the work of any author is contained in a book or pamphlet it shall be sufficient that the name of the author be printed upon the cover, or upon a leaf therein, and where any publisher in the regular course of business publishes as news, telegraphic dispatches not furnished or forwarded by its or his own correspondent or correspondents, but furnished and forwarded by telegraph as news by a telegraphic news agency, established and engaged in forwarding telegraphic news to various different publishers as a business, and having an established business name as such a news agency, it shall be sufficient as to such dispatches that the said business name of such telegraphic news agency be printed in connection with such dispatches as the forwarder of the same. En. Stats. 1899, 155.

## TITLE IX.

OF CRIMES AGAINST THE PERSON AND AGAINST  
PUBLIC DECENCY AND GOOD MORALS.

Chapter I. Rape, Abduction, Carnal Abuse of Children, and Seduction, §§ 261-269b.

II. Abandonment, and Neglect of Children, §§ 270-273e.

III. Abortions, §§ 274, 275.

IV. Child-stealing, § 278.

V. Bigamy, Incest, and the Crime against Nature, §§ 281-288.

VI. Violating Sepulture and the Remains of the Dead, §§ 290-297.

VII. Crimes against Religion and Conscience, and other Offenses against Good Morals, §§ 299-310½.

VIII. Indecent Exposure, Obscene Exhibitions, Books, and Prints, and Bawdy and Other Disorderly Houses, §§ 311-318.

IX. Lotteries, §§ 319-326.

X. Gaming, §§ 330-337.

XI. Pawnbrokers, §§ 338-344.

XII. Other Injuries to Persons, §§ 346-367a.

## CHAPTER I.

## RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

§ 261. Rape defined.

§ 262. When physical ability must be proved.

§ 263. Penetration sufficient.

§ 264. Punishment of rape.

§ 265. Abduction of women.

§ 266. Seduction for purposes of prostitution.

§ 266a. Taking female for purpose of prostitution.

§ 266b. Taking female by force, duress, etc., to live in illicit relation.

§ 266c. Bringing or landing Chinese or Japanese women for purpose of selling.

§ 266d. Placing female in custody for purpose of cohabitation.

§ 266e. Paying for female for purpose of prostitution.

§ 266f. Selling female for immoral purposes.

§ 266g. Placing or permitting the placing of one's wife in house of prostitution.

§ 267. Abduction.

§ 268. Seduction under promise of marriage.

§ 269. Intermarriage subsequent to seduction.

§ 269a. Open and notorious fornication and adultery.

§ 269b. Open and notorious adultery of married persons. Proof.

§ 261. **Rape defined.** Rape is an act of sexual intercourse, accomplished with a female not the wife of the perpetrator, under either of the following circumstances:

1. Where the female is under the age of sixteen years;
2. Where she is incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent;
3. Where she resists, but her resistance is overcome by force or violence;
4. Where she is prevented from resisting by threats of great and immediate bodily harm, accompanied by apparent power of execution, or by any intoxicating narcotic, or anaesthetic substance, administered by or with the privy of the accused;
5. Where she is at the time unconscious of the nature of the act, and this is known to the accused;

6. Where she submits under the belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce such belief. En. February 14, 1872. Am'd. 1889, 223; 1897, 201.

Cal. Rep. Cit. 63, 615; 70, 468; 75, 324; 94, 311; 106, 213; 106, 214; 112, 672; 138, 468; 143, 317; 146, 304. Subd. 1—129, 121; 133, 23. Subd. 2—117, 585; 129, 121. Subd. 3—70, 473; 129, 121. Subd. 4—70, 473; 129, 121. Subd. 5—129, 121. Subd. 6—129, 121.

Assault with intent to commit: See ante, sec. 220.

§ 262. **When physical ability must be proved.** No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt. En. February 14, 1872.

Cal. Rep. Cit. 98, 353.

§ 263. **Penetration sufficient.** The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration, however slight, is sufficient to complete the crime. En. February 14, 1872.

Cal. Rep. Cit. 133, 23; 143, 317.

§ 264. **Punishment of rape.** Rape is punishable by imprisonment in the state prison not less than five years. En. February 14, 1872.

Cal. Rep. Cit. 98, 129.

§ 265. **Abduction of women.** Every person who takes any woman unlawfully, against her will, and by force, menace, or duress, compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the state prison not less than two nor more than fourteen years. En. February 14, 1872.

§ 266. **Seduction for purposes of prostitution.** Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame, or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with any man; and every person who aids or assists in such inveiglement or enticement; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. En. February 14, 1872. Am'd. 1873-4, 429.

Cal. Rep. Cit. 49, 10; 87, 286; 119, 594.

See "Act to punish seduction," 1872, post, Appendix, title Seduction, and "Act to punish adultery," 1872: See post, Appendix, title Adultery.

Act to prevent prostitution: See post, Appendix, title Prostitution.

Act to prevent placing married women in house of ill-fame: See post, Appendix, title Prostitution.

§ 266a. **Taking female for purpose of prostitution.** Every person who, within this state, takes any female person against her will and without her consent, or with her consent procured by fraudulent inducement or misrepresentation, for the purpose of prostitution, is punishable by imprisonment in the state prison not exceeding five years, and

a fine not exceeding one thousand dollars. En. Stats. 1905, 655.

266a, 266b, 266c, 266d, 266e, 266f. The statute of 1893, page 217, regarding the compulsory prostitution of women, is codified in the above-named sections. The penalties here set forth in sections 266d, 266e, and 266f, are those of a felony instead of the various penalties set forth in the corresponding sections of the statute codified.—Code Commissioner's Note.

§ 266b. **Taking a female by force, duress, etc., to live in an illicit relation.** Every person who takes any female person unlawfully, and against her will, and by force, menace, or duress, compels her to live with him in an illicit relation, against her consent, or to so live with any other person, is punishable by imprisonment in the state prison not less than two nor more than four years. En. Stats. 1905, 655.

See note to § 266a, ante.

§ 266c. **Bringing or landing Chinese or Japanese women for the purpose of selling.** Every person bringing to, or landing within this state, any female person born in the empire of China or the empire of Japan, or the islands adjacent thereto, with intent to place her in charge or custody of any other person, and against her will to compel her to reside with him, or for the purpose of selling her to any person whomsoever, is punishable by a fine of not less than one nor more than five thousand dollars, or by imprisonment in the county jail not less than six nor more than twelve months. En. Stats. 1905, 656.

See note to § 266a, ante.

§ 266d. **Placing female in custody for the purpose of cohabitation.** Any person who receives any money or other valuable thing for or on account of his placing in custody any female for the purpose of causing her to cohabit with any male to whom she is not married, is guilty of a felony. En. Stats. 1905, 656.

See note to § 266a, ante.

§ 266e. **Paying for female for the purpose of prostitution.** Every person who purchases, or pays any money or other valuable thing for, any female person for the purpose of prostitution, or for the purpose of placing her, for immoral purposes, in any house or place against her will, is guilty of a felony. En. Stats. 1905, 656.

See note to § 266a, ante.

§ 266f. **Selling female for immoral purposes.** Every person who sells any female person or receives any money or other valuable thing for or on account of his placing in custody, for immoral purposes, any female person, whether with or without her consent, is guilty of a felony. En. Stats. 1905, 656.

See note to § 266a, ante.

§ 266g. **Placing or permitting the placing of one's wife in house of prostitution.** Every man who, by force, intimidation, threats, persuasion, promises, or any other means, places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or connives at or consents to, or permits, the placing or leaving of his wife in a house of prostitution, or allows or permits her to remain therein, is guilty of a felony and punishable by imprisonment in the state prison for not less than three nor more than ten years; and in all prosecutions under this section a wife is a competent witness against her husband. En. Stats. 1905, 656.

This section codifies the statute of 1891, page 285, regarding the placing and keeping of married women in houses of prostitution.—Code Commissioner's Note.

§ 267. **Abduction.** Every person who takes away any female under the age of eighteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison not exceeding five years, and a fine not exceeding one thousand dollars. En. February 14, 1872.

Cal. Rep. Cit. 61, 480; 61, 481; 71, 612; 88, 138; 88, 317; 96, 316; 96, 318; 141, 544; 141, 545; 141, 548.

Act to prevent prostitution: See post, Appendix, title Prostitution.

Act to prevent seduction: See post, Appendix, title Seduction.

§ 268. **Seduction under promise of marriage.** Every person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by imprisonment in the state prison for not more than five years, or by a fine of



not more than five thousand dollars, or by both such fine and imprisonment. En. Stats. 1889, 12.

Cal. Rep. Cit. 93, 77; 97, 451; 118, 673; 120, 539; 123, 225; 123, 226; 137, 268; 143, 101.

§ 269. Intermarriage subsequent to seduction. The intermarriage of the parties subsequent to the commission of the offense is a bar to a prosecution for a violation of the last section; provided, such marriage take place prior to the finding of an indictment or the filing of an information charging such offense. En. Stats. 1889, 12.

Cal. Rep. Cit. 120, 539; 123, 225; 123, 226.

§ 269a. Open and notorious fornication and adultery. Every person who lives in a state of open and notorious cohabitation and adultery is guilty of a misdemeanor, and punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both. En. Stats. 1905, 657.

269a, 269b. The act to punish adultery (Stats. 1871-2, page 380) is codified in the two sections above named.—Code Commissioner's Note.

§ 269b. Open and Notorious adultery of married persons; proof. If two persons, each being married to another, live together in a state of open and notorious cohabitation and adultery, each is guilty of a felony, and punishable by imprisonment in the state prison not exceeding five years. A recorded certificate of marriage or a certified copy thereof, there being no decree of divorce, proves the marriage of a person for the purposes of this section. En. Stats. 1905, 657.

See note to § 269a, ante.

## CHAPTER II.

### ABANDONMENT AND NEGLECT OF CHILDREN.

§ 270. Omitting to provide necessities.

271. Deserting child.

271a. Penalty for abandonment.

272. Selling, apprenticing, etc., children.

273. Receiving, hiring, etc., children.

273. Minor not to visit saloons, etc.

273a. Unjustifiable punishment, causing child to suffer.

273b. Child not to be confined.

273c. Fines, how appropriated.

273d. Court may commit child to charitable institutions.

273e. Minor not to deliver messages, etc., to certain places.

§ 270. Omitting to provide necessities. A parent who willfully omits, without lawful excuse, to furnish neces-



**270a (new).** Every husband having sufficient ability to provide for his wife's support, or who is able to earn the means of such wife's support, who willfully abandons and leaves his wife in a destitute condition or who refuses or neglects to provide such wife with necessary food, clothing, shelter, or medical attendance, unless by her misconduct he was justified in abandoning her, is guilty of a misdemeanor. (Became a law, under constitutional provision, without Governor's approval, March 4, 1907.)

**270b (new).** After arrest, conviction or plea of guilty on a charge of a misdemeanor under either section two hundred and seventy or two hundred and seventy a, of this code, and before trial or sentence, if the defendant shall appear before the court and enter into an undertaking with sufficient sureties to the people of the State of California in such penal sum as the court may fix, to be approved by the court, and conditioned that the defendant will furnish said minor child or wife as the case may be, with necessary food, clothing, shelter or medical attendance, when the court may suspend proceedings or sentence therein; and said undertaking is valid and binding for six months; and upon the failure of defendant to comply with said undertaking, he may be ordered to appear before the court and show cause why further proceedings should not be had on said action or sentence should not be imposed, whereupon the court may proceed with said action, or pass sentence, or for good cause shown may modify the order and take a new undertaking and further suspend proceedings, or sentence for a like period. (Became a law, under constitutional provision, without Governor's approval, March 4, 1907.)



sary food, clothing, shelter, or medical attendance for his child, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 758.

The change consists in the omission of the words now following the word "excuse," "to perform any duty imposed upon him by law." They are clearly without signification as employed in the section.—Code Commissioner's Note.

Indictable omissions: Sec. 26, subd. 6.

Duty of parent to support child: See Civ. Code, secs. 196, 208, 209.

Statutes: See "An act for the protection of children, and to prevent and punish certain wrongs to children," approved March 30, 1878; 1877-8, 812; post, Appendix, title Infancy. Act relating to orphaned and abandoned children, Stats. 1873-4, 297. Also, "An act relating to children," approved March 30, 1878; 1877-8, 813; post, Appendix, title Infancy. Act to prevent cruelty to children: See post, Appendix, title Infancy.

§ 271. **Deserting child.** Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the state prison not exceeding seven years, or in a county jail not exceeding one year. En. February 14, 1872.

§ 271a. **Penalty for abandonment.** Every person who knowingly and willfully abandons, or who, having ability so to do, fails or refuses to maintain his or her minor child under the age of fourteen years, or who falsely, knowing the same to be false, represents to any manager, officer, or agent of any orphan asylum or charitable institution for the care of orphans, that any child for whose admission into such asylum or institution application is made is an orphan, is guilty of a misdemeanor. En. Stats. 1905, 758.

The penal section of the statute of 1873-4, relating to the care of orphan and abandoned children, is codified in this section.—Code Commissioner's Note.

§ 272. **Selling, apprenticing, etc., children.** Any person, whether as parent, relative, guardian, employer, or otherwise, having the care, custody, or control of any child under the age of sixteen years, who exhibits, uses, or employs, or in any manner, or under any pretense, sells, apprentices, gives away, lets out, or disposes of any such child to any

person, under any name, title, or pretense, for or in any business, exhibition, or vocation, injurious to the health or dangerous to the life or limb of such child, or in or for the vocation, occupation, service, or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging, or peddling, or as a gymnast, acrobat, contortionist, or rider, in any place whatsoever, or for or in any obscene, indecent or immoral purposes, exhibition, or practice whatsoever, or for or in any mendicant or wandering business whatsoever, or who causes, procures, or encourages such child to engage therein, is guilty of a misdemeanor, and punishable by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. Nothing in this section contained applies to or affects the employment or use of any such child, as a singer or musician in any church, school, or academy, or the teaching or learning of the science or practice of music; or the employment of any child as a musician at any concert or other musical entertainment, on the written consent of the mayor of the city or president of the board of trustees of the city or town where such concert or entertainment takes place. En. Stats. 1875-6, 110. Am'd. 1905, 759.

272, 273, 273a, 273b, 273c, 273d. The two statutes, one of 1877-8, page 812, and the other of 1877-8, page 813, relating to children, are codified by an amendment to section 272, and by the addition of sections 273, 273a, 273b, 273c, and 273d.—Code Commissioner's Note.

**§ 273. Receiving, hiring, etc., children.** Every person who takes, receives, hires, employs, uses, exhibits, or has in custody, any child under the age, and for any of the purposes mentioned in the preceding section, is guilty of a like offense, and punishable by a like punishment as therein provided. En. Stats. 1905, 759. [March 22, 1905.]

See note to § 272, ante.

At the same session of the legislature another section 273 was adopted as follows:

**§ 273. Minor not to visit saloons, etc.** Any person whether as parent, guardian, employer, or otherwise, and any firm or corporation, who as employer or otherwise, shall send, direct, or cause to be sent or directed to any saloon, gambling house, house of prostitution, or other immoral place, any minor under the age of eighteen years, is guilty of a misdemeanor. En. Stats. 1905, 74. [March 7, 1905.]





**§ 273a. Unjustifiable punishment, causing child to suffer.** Any person who willfully causes or permits any child to suffer, or who inflicts thereon unjustifiable physical pain or mental suffering, and whoever, having the care or custody of any child, causes or permits the life or limb of such child to be endangered, or the health of such child to be injured, and any person who willfully causes or permits such child to be placed in such situation that its life or limb may be endangered, or its health likely to be injured, is guilty of a misdemeanor. En. Stats. 1905, 759.

See note to § 272, ante.

**§ 273b. Child not to be confined.** No child under the age of sixteen years must be placed in any prison, or place of confinement, or in any courtroom, or in any vehicle for transportation to any place, in company with adults charged with or convicted of crime, except in the presence of a proper official. En. Stats. 1905, 760.

See note to § 272, ante.

**§ 273c. Fines, how appropriated.** All fines, penalties, and forfeitures imposed and collected under the provisions of the five preceding sections, or under the provisions of any law relating to, or affecting, children, in every case where the prosecution is instituted or conducted by a society incorporated under the laws of this state for the prevention of cruelty to children, inure to such society in aid of the purposes for which it is incorporated. En. Stats. 1905, 760.

See note to § 272, ante.

**§ 273d. Court may commit child to charitable institution.** When, upon examination before a court or magistrate, it appears that any child under the age of sixteen years has been found begging, whether actually begging or under the pretext of selling anything, or wandering and not having any settled place of abode, or proper guardianship, or visible means of subsistence; or destitute, or frequenting the company of reputed thieves, or prostitutes or houses of prostitution or assignation, dance houses, concert saloons, theaters, or places where spirituous liquors are sold; or engaged in any business, exhibition, or vocation mentioned in section two hundred and seventy-two; or in the custody of any person convicted of a criminal assault upon it; the court or magistrate may, when it deems it expedient for the welfare of such child, commit it to an orphan asylum, society for

the prevention of cruelty to children, or other charitable institution, or make such other disposition thereof as now is or may hereafter be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children. En. Stats. 1905, 760.

See note to § 272, ante.

§ 273e. Minor not to deliver messages, etc., to certain places. Every telephone, special delivery company or association, and every other corporation or person engaged in the delivery of packages, letters, notes, messages, or other matter, and every manager, superintendent, or other agent of such person, corporation, or association, who sends any minor in the employ or under the control of any such person, corporation, association, or agent, to the keeper of any house of prostitution, variety theater, or other place of questionable repute, or to any person connected with, or any inmate of, such house, theater, or other place, or who permits such minor to enter such house, theater or other place, is guilty of a misdemeanor. En. Stats. 1905, 760.

273e. The matter now in section 1339, which incorrectly stands in a chapter entitled "Dismissal of the Action," is put into a new section designated as 273e, and is put in its proper chapter, with the other sections relative to children, and section 1339 accordingly repealed.—Code Commissioner's Note.

### CHAPTER III.

#### ABORTIONS.

§ 274. Administering drugs, etc., with intent to produce miscarriage.  
§ 275. Submitting to an attempt to produce miscarriage.

§ 274. Administering drugs, etc., with intent to produce miscarriage. Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two nor more than five years. En. February 14, 1872.

Cal. Rep. Cit. 143, 261.

§ 275. Submitting to an attempt to produce miscarriage. Every person who solicits of any person any medicine,



**273f (new).** Any person, whether as parent, guardian, employer, or otherwise, and any firm or corporation, who employs or otherwise, shall send, direct, or cause to be sent or directed to any saloon, gambling house, house of prostitution, or other immoral place, any minor under the age of eighteen, is guilty of a misdemeanor. (In effect 60 days from and after March 18, 1907.)

**273g (new).** Any person who in the presence of any child indulges in any degrading, lewd, immoral or vicious acts or practices, or who is habitually drunk in the presence of any child in his care, custody or control, is guilty of a misdemeanor. (In effect 60 days from and after March 21, 1907.)



drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one nor more than five years. En. February 14, 1872.

See act of 1880, relating to sale of poisonous substance, Appendix, title Poisons.

## CHAPTER IV.

### CHILD-STEALING.

§ 278. Definition and punishment of child-stealing.

§ 278. Definition and punishment of child-stealing. Every person who maliciously, forcibly, or fraudulently takes or entices away any minor child with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the state prison not exceeding twenty years. En. February 14, 1872. Am'd. 1901, 269.

Cal. Rep. Cit. 60, 72; 147, 426.

## CHAPTER V.

### BIGAMY, INCEST, AND THE CRIME AGAINST NATURE.

- § 281. Bigamy defined.
- § 282. Exceptions.
- § 283. Punishment of bigamy.
- § 284. Marrying a husband or wife of another.
- § 285. Incest.
- § 286. Crime against nature.
- § 287. Penetration sufficient to complete the crime.
- § 288. Crimes against children a felony.

§ 281. Bigamy defined. Every person having a husband or wife living, who marries any other person, except in the cases specified in the next section, is guilty of bigamy. En. February 14, 1872.

Cal. Rep. Cit. 99, 288.

Marriage is a civil contract, and must be followed by solemnization: See Civ. Code, sec. 55.

§ 282. **Exceptions.** The last section does not extend—

1. To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years, without being known to such person within that time to be living; nor,

2. To any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court. En. February 14, 1872.

§ 283. **Punishment of bigamy.** Bigamy is punishable by fine not exceeding five thousand dollars and by imprisonment in the state prison not exceeding ten years. En. February 14, 1872. Am'd. 1905, 245.

§ 284. **Marrying a husband or wife of another.** Every person who knowingly and willfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of this chapter, is punishable by fine not less than five thousand dollars, or by imprisonment in the state prison not exceeding ten years. En. February 14, 1872. Am'd. 1905, 245.

§ 285. **Incest.** Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, are punishable by imprisonment in the state prison not exceeding ten years. En. February 14, 1872.

Cal. Rep. Cit. 102, 242; 119, 458; 141, 606; 141, 607; 141, 609; 142, 622.

Incestuous marriages: See Civ. Code, sec. 59.

Person solemnizing incestuous marriage, how punished: Post, sec. 359.

§ 286. **Crime against nature.** Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than five years. En. February 14, 1872.

Assault to commit crime against nature: See sec. 220.

§ 287. **Penetration sufficient to complete the crime.** Any sexual penetration, however slight, is sufficient to complete the crime against nature. En. February 14, 1872.

§ 288. Crimes against children a felony. Any person who shall willfully and lewdly commit any lewd or lascivious act other than the acts constituting other crimes provided for in part two of this code upon or with the body, or any part or member thereof, of a child under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child, shall be guilty of a felony and shall be imprisoned in the state prison not less than one year. En. Stats. 1901, 630.

Cal. Rep. Cit. 142, 147; 142, 151.

## CHAPTER VI.

### VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

- 290. Unlawful mutilation or removal of dead bodies.
- 291. Unlawful removal of dead body from grave for dissection, etc.
- 292. Who are charged with the duty of burial.
- 293. Punishment for omitting to bury.
- 294. Who are entitled to custody of a body.
- 295. Arresting or attaching a dead body.
- 296. Defacing tombs and monuments.
- 297. Unlawful interments.

§ 290. Unlawful mutilation or removal of dead bodies. Every person who mutilates, disinters, or removes from the place of sepulture the dead body of a human being without authority of law, is guilty of felony. But the provisions of this section do not apply to any person who removes the dead body of a relative or friend for reinterment. En. February 14, 1872.

Cal. Rep. Cit. 58, 226; 58, 227; 135, 72; 135, 76.

Bodies not to be removed without permit: Pol. Code, sec. 3027.

Act to prevent disinterring dead bodies: See post, Appendix, title Public Health.

§ 291. Unlawful removal of dead body from grave for dissection, etc. Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same, or to dissect it, without authority of law, or from malice or wantonness, is punishable by

imprisonment in the state prison not exceeding five years.  
En. February 14, 1872.

**§ 292. Who are charged with the duty of burial.** The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

1. If the deceased was a married woman, the duty of burial devolves upon her husband;

2. If the deceased was not a married woman, but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age, and within this state, and possessed of sufficient means to defray the necessary expenses;

3. If the deceased left no husband nor kindred answering the foregoing description, the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if there is none, then upon the persons charged with the support of the poor in the locality in which the death occurs;

4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant; or if there is no tenant, upon the owner of the premises, or master; or if there is no master, upon the owner of the vessel in which the death occurs or the body is found. En. February 14, 1872.

Cal. Rep. Cit. 110, 88; 113, 203; 123, 289; 131, 72; 140, 233.

**§ 293. Punishment for omitting to bury.** Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered in a civil action. En. February 14, 1872.

**§ 294. Who are entitled to custody of a body.** The person charged by law with the duty of burying the body of a

deceased person is entitled to the custody of such body for the purpose of burying it; except that in the case in which an inquest is required by law to be held upon a dead body by a coroner, such coroner is entitled to its custody until such inquest has been completed. En. February 14, 1872.

Cal. Rep. Cit. 131, 72; 134, 294.

**§ 295. Arresting or attaching a dead body.** Every person who arrests or attaches any dead body of a human being, upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 118, 26.

**§ 296. Defacing tombs and monuments.** Every person who willfully and maliciously defaces, breaks, destroys, or removes any tomb, monument, or gravestone, erected to any deceased person, or any memento or memorial, or any ornamental plant, tree, or shrub, appertaining to the place of burial of a human being, or who shall mark, deface, injure, destroy, or remove any fence, post, rail, or wall of any cemetery or graveyard, is guilty of a misdemeanor. En. February 14, 1872.

**§ 297. Unlawful interments.** Every person who shall bury or inter, or cause to be buried or interred, the dead body of any human being, or any human remains, in any place within the corporate limits of any city or town in this state, or within the corporate limits of the city and county of San Francisco, except in a cemetery, or place of burial, now existing under the laws of this state, and in which interments have been made, or that is now or may hereafter be established or organized by the board of supervisors of the county, or city and county, in which such city or town, or city and county is situate, shall be guilty of a misdemeanor. En. Stats. 1873-4, 458.

Cal. Rep. Cit. 60, 4; 140, 233.

## CHAPTER VII.

### OF CRIMES AGAINST RELIGION AND CONSCIENCE, AND OTHER OFFENSES AGAINST GOOD MORALS.

- § 299. Sunday amusement, where liquors are sold. (Repealed.)
- § 300. Keeping open places of business on Sunday. (Repealed.)
- § 301. Limitation on operation of preceding section. (Repealed.)
- § 302. Disturbing religious meetings.
- § 303. Sale of liquors at theaters, and employing women to sell liquors thereat. (Repealed.)
- § 304. Selling liquors at camp-meeting.
- § 305. Limitation of preceding section.
- § 306. Females exhibited in public places. (Repealed.)
- § 307. Keeping or resorting to place where opium is used.
- § 308. Selling tobacco to minors.
- § 309. Admission of minor to place of prostitution.
- § 310. No section of this number.
- § 310½. Barber-shops open on Sunday. (Repealed.)

§ 299. Sunday amusement, where liquors are sold. (Repealed.) En. February 14, 1872. Rep. Stats. 1883, 1.  
Cal. Rep. Cit. 60, 198.

Note.—The section read as follows: “Sec. 299. Every person who, on the Christian sabbath, gets up, exhibits, opens, or maintains, or aids in getting up, exhibiting, opening, or maintaining, any bull, bear, cock, or prize fight, horse-race, circus, gambling-house, or saloon, or any barbarous and noisy amusement, or who keeps, conducts, or exhibits any theater, melodeon, dance-cellar, or other place of musical, theatrical, or operatic performance, spectacle, or representation where any wines, liquors, or intoxicating drinks are bought, sold, used, drank, or given away, or who purchases any ticket of admission, or directly or indirectly pays any admission fee to or for the purpose of witnessing or attending any such place, amusement, spectacle, performance, or representation, is guilty of a misdemeanor.”

§ 300. Keeping open places of business on Sunday. (Repealed.) En. February 14, 1872. Rep. Stats. 1883, 1.  
Cal. Rep. Cit. 59, 7; 60, 152; 60, 188; 60, 190; 60, 191; 60, 192; 60, 193; 60, 195; 60, 198; 60, 201; 60, 205.

The section read as follows: “Sec. 300. Every person who keeps open on Sunday any store, workshop, bar, saloon, banking-house, or other place of business, for the purpose of transacting business therein, is punishable by fine not less than five nor more than fifty dollars.”



§ 301. **Limitation on operation of preceding section.** (Repealed.) En. February 14, 1872. Am'd. 1880, 38. Rep. 1883, 1.

Cal. Rep. Cit. 59, 12; 60, 188; 60, 189; 60, 190; 60, 191; 60, 192; 60, 193; 60, 198; 60, 201; 60, 205.

The section read as follows: "Sec. 301. The provisions of the preceding section do not apply to persons who, on Sunday, keep open hotels, boarding-houses, barber-shops, baths, markets, restaurants, taverns, livery-stables, or retail drug stores, for the legitimate business of each, or such manufacturing establishments as are usually kept in continued operation."

Act providing day of rest from labor: See post, Appendix, title Sundays.

Act providing for day of rest in bakeries: See post, Appendix, title Sundays.

§ 302. **Disturbing religious meetings.** Every person who willfully disturbs or disquiets any assemblage of people met for religious worship, by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 657.

The change consists in the omission of the word "noise" before the word "profane," it being manifestly an error in the statute, as it occurs later in the section with a qualification.—Code Commissioner's Note.

Cal. Rep. Cit. 60, 195; 60, 198.

§ 303. **Sale of liquors at theaters, and employing women to sell liquors thereat.** En. February 14, 1872. Rep. 1905, 657.

The section is in conflict with section 18 of Article XX of the Constitution, which provides that "no person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation or profession." (See *Ex parte Maguire*, 57 Cal. 604.)—Code Commissioner's Note.

See Const. Cal., sec. 18, art. XX.

Sale of liquors to minors: Act of 1872, Appendix, title Intoxicating Liquors. Intoxication of officers: Act of 1880, Appendix, title Officers.

Special acts.—Sale of liquors on election days. Act in effect March 7, 1874; Stats. 1873-4, 297: See post, Appendix, title Intoxicating Liquors. Sale of liquors at state capitol, act in effect April 16, 1880; Stats. 1880, 273: See post, Appendix, title Intoxicating Liquors.

**§ 304. Selling liquors at camp-meeting.** Every person who erects or keeps a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous, or intoxicating liquors, or any drink of which wines, spirituous, or intoxicating liquors form a part, or for selling or otherwise disposing of any article of merchandise, or who peddles, or hawks about any such drink or article, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, is punishable by fine of not less than five nor more than five hundred dollars. En. February 14, 1872.

Cal. Rep. Cit. 60, 191; 60, 195.

**§ 305. Limitation of preceding section.** The provisions of the preceding section do not apply to any person carrying on a regular business in the sale of liquors or other articles, which business was established prior to the appointment of the meeting referred to in such section. En. February 14, 1872.

**§ 306. Females exhibited in public places.** En. February 14, 1872. Am'd. 1873-4, 459; 1873-4, 460. Rep. 1905, 658.

This section is explicitly held to be in conflict with section 18 of Article XX of the Constitution in *Ex parte Maguire*, 57 Cal. 604, 609.—Code Commissioner's Note.

Cal. Rep. Cit. 57, 605.

**§ 307. Keeping or resorting to place where opium is used.** Every person who opens or maintains, to be resorted to by other persons, any place where opium, or any of its preparations, is sold or given away, to be smoked at such place; and any person who, at such place sells or gives away any opium, or its said preparations, to be there smoked or otherwise used; and every person who visits or resorts to any such place for the purpose of smoking opium or its said preparations, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the

county jail not exceeding six months, or by both such fine and imprisonment. En. February 14, 1872. Am'd. 1873-4, 459. Rep. Stats. 1873-4, 461. En. Stats. 1881, 34.

Cal. Rep. Cit. 73, 144; 73, 146; 73, 150; 73, 151; 73, 152.

§ 308. **Selling tobacco to minors.** Every person who sells, or gives, or furnishes in any way to another who is in fact under the age of sixteen years, any tobacco, or preparation of tobacco, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars; provided, however, that this section shall not be deemed to apply to articles furnished on prescriptions from physicians authorized by law to practice medicine, nor to persons who supply such articles to their own children, nor to sales made to such minors upon the written consent of the parents or guardians of such minors first obtained in writing by the vender. En. Stats. 1891, 64.

Sale of liquor to minors: See post, Appendix, title Intoxicating Liquors.

§ 309. **Admission of minor to place of prostitution.** Any proprietor, keeper, manager, conductor, or person having the control of any house of prostitution, or any house or room resorted to for the purpose of prostitution, who shall admit or keep any minor of either sex therein; or any parent or guardian of any such minor who shall admit or keep such minor, or sanction, or connive at the admission or keeping thereof, into, or in any such house, or room, shall be guilty of a misdemeanor. En. Stats. 1880, 36.

Act to punish using child for immoral purposes: See post, Appendix, title Infancy.

Act prohibiting child entering saloon, begging, etc.: See post, Appendix, title Infancy.

§ 310. No section of this number.

§ 310½. **Barber-shops open on Sunday.** En. Stats. 1895, 247. Rep. 1905, 658.

This section was explicitly held to be unconstitutional in *Ex parte Jentzsch*, 112 Cal. 468.—Code Commissioner's Note.

Cal. Rep. Cit. 112, 470.

## CHAPTER VIII.

### INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

- § 311. Indecent exposures, exhibitions, and pictures.
- § 312. Seizure of indecent articles authorized.
- § 313. Their character to be summarily determined.
- § 314. Their destruction.
- § 315. Keeping or residing in a house of ill-fame; proof.
- § 316. Keeping disorderly houses.
- § 317. Advertising to produce miscarriage.
- § 318. Enticing to place of gambling or prostitution.

§ 311. Indecent exposures, exhibitions, and pictures. Every person who willfully and lewdly, either:

1. Exposes his person or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels, or assists any person so to expose himself, or to take part in any model artist exhibition, or to make any other exhibition of himself to public view or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

4. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print, or figure; or,

5. Sings any lewd or obscene song, ballad, or other words, in any public place, or in any place where there are persons present to be annoyed thereby;  
—is guilty of a misdemeanor. En. February 14, 1872.  
Am'd. 1873-4, 429.

§ 312. Seizure of indecent articles authorized. Every person who is authorized or enjoined to arrest any person for a violation of subdivision three of the last section, is equally authorized and enjoined to seize any obscene or

indecent writing, paper, book, picture, print, or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken. En. February 14, 1872.

**§ 313. Their character to be summarily determined.** The magistrate to whom any obscene or indecent writing, paper, book, picture, print, or figure, is delivered, pursuant to the foregoing section, must, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print, or figure, and if he finds it to be obscene or indecent, he must deliver one copy to the district attorney of the county in which the accused is liable to indictment or trial, and must at once destroy all the other copies. En. February 14, 1872.

**§ 314. Their destruction.** Upon the conviction of the accused, such district attorney must cause any writing, paper, book, picture, print, or figure, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed. En. February 14, 1872.

**§ 315. Keeping or residing in house of ill-fame; proof.** Every person who keeps a house of ill-fame in this state, resorted to for the purposes of prostitution or lewdness, or who willfully resides in such house, is guilty of misdemeanor; and in all prosecutions for keeping or resorting to such a house common repute may be received as competent evidence of the character of the house, the purpose for which it is kept or used, and the character of the women inhabiting or resorting to it. En. February 14, 1872. Am'd. 1905, 668.

The change consists in the addition of the matter following the semicolon. The new matter is taken from the statute of 1873-4, page 84, and makes the reputation of the house evidence of its character and of that of the women resorting to it.—Code Commissioner's Note.

Cal. Rep. Cit. 88, 102; 147, 292.

**§ 316. Keeping disorderly houses.** Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public re-

sort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner; and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1873-4, 430.

Cal. Rep. Cit. 114, 93; 127, 35; 147, 292; 147, 545.

§ 317. **Advertising to produce miscarriage.** Every person who willfully writes, composes, or publishes any notice or advertisement of any medicine, or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purpose, is guilty of a felony. En. Stats. 1873-4, 430.

§ 318. **Enticing to place of gambling or prostitution.** Whoever, through invitation or device, prevails upon any person to visit any room, building, or other places kept for the purposes of gambling or prostitution, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not exceeding six months, or fined not exceeding five hundred dollars, or be punished by both such fine and imprisonment. En. Stats. 1880, 40.

## CHAPTER IX.

### LOTTERIES.

- 319. Lottery defined.
- 320. Punishment for drawing lottery.
- 321. Punishment for selling lottery tickets.
- 322. Aiding lotteries.
- 323. Lottery offices. Advertising lottery offices.
- 324. Insuring lottery tickets. Publishing offers to insure.
- 325. Property offered for disposal in lottery forfeited.
- 326. Letting building for lottery purposes.

§ 319. **Lottery defined.** A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or

chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known. En. February 4, 1872.

Cal. Rep. Cit. 68, 289; 70, 633.

**§ 320. Punishment for drawing lottery.** Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 91, 440.

**§ 321. Punishment for selling lottery tickets.** Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person any ticket, chance, share, or interest, or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in, or depending upon the event of any lottery, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 70, 633; 92, 652.

**§ 322. Aiding lotteries.** Every person who aids or assists, either by printing, writing, advertising, publishing, or otherwise, in setting up, managing, or drawing any lottery, or in selling or disposing of any ticket, chance, or share therein, is guilty of a misdemeanor. En. February 14, 1872.

**§ 323. Lottery offices. Advertising lottery offices.** Every person who opens, sets up, or keeps, by himself or by any other person, any office or other place for the sale of, or for registering the number of any ticket in any lottery, or who, by printing, writing, or otherwise, advertises or publishes the setting up, opening, or using of any such office, is guilty of a misdemeanor. En. February 14, 1872.

**§ 324. Insuring lottery tickets.** Publishing offers to insure. Every person who insures or receives any consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within this state or not, or who receives any valuable consideration upon any agreement to repay any sum, or deliver the same, or any other property, if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not be



drawn, at any particular time or in any particular order, or who promises or agrees to pay any sum of money, or to deliver any goods, things in action, or property, or to forbear to do anything for the benefit of any person, with or without consideration, upon any event or contingency, dependent on the drawing of any ticket in any lottery, or who publishes any notice or proposal of any of the purposes aforesaid, is guilty of a misdemeanor. En. February 14, 1872.

§ 325. **Property offered for disposal in lottery forfeited.** All moneys and property offered for sale or distribution in violation of any of the provisions of this chapter are forfeited to the state, and may be recovered by information filed, or by any action brought by the attorney-general, or by any district attorney, in the name of the state. Upon the filing of information or complaint, the clerk of the court, or if the suit be in a justice's court, the justice, must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property, and is issued in the same manner, as attachments issued from the district courts in civil cases. En. February 14, 1872.

§ 326. **Letting building for lottery purposes.** Every person who lets, or permits to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing any lottery, or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 68, 289; 91, 440; 93, 439.

## CHAPTER X.

### GAMING.

- § 330. Gaming prohibited. Penalty.
- § 331. Permitting gambling in houses owned or rented.
- § 332. Winning at play by fraudulent means.
- § 333. Witnesses neglecting or refusing to attend trial.
- § 334. Witness' privilege.
- § 335. Duties of district attorneys, sheriffs, and others.
- § 336. Permitting minor to play in saloon.
- § 337. Pretending to give authority to conduct games.

§ 330. **Gaming prohibited. Penalty.** Every person who deals, plays, or carries on, opens, or causes to be opened,



or who conducts, either as owner or employee, whether for hire, or not, any game of faro, monte, roulette, lansquenet, rouge et noir, rondo, tan, fan-tan, stud-horse poker, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of said prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars nor not more than five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. En. February 14, 1872. Am'd. 1885, 135; 1891, 57.

Cal. Rep. Cit. 47, 128; 53, 247; 60, 82; 63, 299; 63, 300; 63, 301; 64, 157; 64, 158; 64, 159; 64, 162; 70, 516; 80, 155; 82, 182; 84, 166; 84, 167; 85, 581; 128, 29; 137, 16.

**§ 331. Permitting gambling in houses owned or rented.** Every person who knowingly permits any of the games mentioned in the preceding section to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in the preceding section. En. February 14, 1872.

**§ 332. Winning at play by fraudulent means.** Every person who, by the game of "three-card monte" so-called, or any other game, device, sleight of hand, pretensions to fortune-telling, trick, or other means whatever, by use of cards or other implements or instruments, or while betting on sides or hands of any such play or game, fraudulently obtains from another person money or property of any description, shall be punished as in case of larceny of property of like value. En. February 14, 1872. Am'd. 1877-8, 115; 1880, 40.

Cal. Rep. Cit. 107, 152; 110, 601; 110, 602; 110, 603; 122, 357.

**§ 333. Witnesses neglecting or refusing to attend trial.** Every person duly summoned as a witness for the prosecution, on any proceedings had under this chapter, who neglects or refuses to attend, as required, is guilty of a misdemeanor. En. February 14, 1872.

§ 334. **Witness's privilege.** No person, otherwise competent as a witness, is disqualified from testifying as such concerning the offense of gaming, on the ground that such testimony may eriminate himself; but no prosecution can afterward be had against him for any offense concerning which he testified. En. February 14, 1872.

§ 335. **Duties of district attorneys, sheriffs, and others.** Every district attorney, sheriff, constable, or police officer must inform against and diligently prosecute persons whom they have reasonable cause to believe offenders against the provisions of this chapter, and every such officer refusing or neglecting so to do, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 147, 529; 147, 533.

§ 336. **Permitting minor to play in saloon.** Every owner, lessee, or keeper of any house used in whole, or in part, as a saloon or drinking-place, who knowingly permits any person under twenty-one years of age to play at any game of chance therein, is guilty of a misdemeanor. En. Stats. 1873-4, 461.

§ 337. **Pretending to give authority to conduct games.** Every state, county, city, city and county, town, or township officer, or other person who shall ask for, receive, or collect any money, or other valuable consideration, either for his own or the public use, for and with the understanding that he will aid, exempt, or otherwise assist any person, from arrest or conviction for a violation of section three hundred and thirty of the Penal Code; or who shall issue, deliver, or cause to be given or delivered to any person or persons any license, permit, or other privilege, giving or pretending to give any authority or right to any person or persons to carry on, conduct, open, or cause to be opened, any game or games which are forbidden or prohibited by section three hundred and thirty of said code; and any of such officer or officers who shall vote for the passage of any ordinance or by-law, giving, granting, or pretending to give or grant to any person or persons any authority or privilege to open, carry on, conduct, or cause to be opened, carried on, or conducted, any game or games prohibited by said section three hundred and thirty of the Penal Code, is guilty of a felony. En. Stats. 1885, 113.

## CHAPTER XI.

## PAWNBROKERS.

- § 338. Pawnbroking without license.
- § 339. Failing to keep a register.
- § 340. Charging unlawful rate of interest.
- § 341. Selling before time of redemption has expired, or without notice.
- § 342. Refusing to disclose particulars of sale.
- § 343. Refusing to allow an officer with search-warrant to inspect register of pledged articles.
- § 344. Junk dealers, application of code sections to.

**§ 338. Pawnbroking without license.** Every person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest above the rate of ten per cent per annum, except by authority of a license, is guilty of a misdemeanor. En. February 14, 1872.

Pledge from minor under sixteen: See post, sec. 501.

Pledge: See Civ. Code, secs. 2986-3011.

**§ 339. Failing to keep a register.** Every person who carries on the business of a pawnbroker, who fails at the time of the transaction to enter in a register kept by him for that purpose, in the English language, the date, duration, amount, and rate of interest of every loan made by him, or an accurate description of the property pledged, or the name and residence of the pledgor, or to deliver to the pledgor a written copy of such entry, or to keep an account in writing of all sales made by him, is guilty of a misdemeanor. En. February 14, 1872.

This section applies to junk dealers: See post, sec. 344.

**§ 340. Charging unlawful rate of interest.** Every pawnbroker who charges or receives interest at the rate of more than two per cent per month, or who, by charging commissions, discount, storage, or other charge, or by compounding increases, or attempts to increase such interest, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1881, 75.

Cal. Rep. Cit. 67, 360.

**§ 341. Selling before time of redemption has expired, or without notice.** Every pawnbroker who sells any

article pledged to him and unredeemed, until it has remained in his possession six months after the last day fixed by contract for redemption, or who makes any sale without publishing in a newspaper printed in the city, town, or county, at least five days before such sale, a notice containing a list of the articles to be sold and specifying the time and place of sale, is guilty of a misdemeanor. En. February 14, 1872.

§ 342. Refusing to disclose particulars of sale. Every pawnbroker who willfully refuses to disclose to the pledgor or his agent the name of the purchaser and the price received by him for any article received by him in pledge and subsequently sold, or who, after deducting from the proceeds of any sale the amount of the loan and interest due thereon, and four per cent on the loan for expenses of sale, refuses, on demand, to pay the balance to the pledgor or his agent, is guilty of a misdemeanor. En. February 14, 1872.

This section applies to junk dealers: See post, sec. 344.

§ 343. Refusing to allow an officer with search-warrant to inspect register of pledged articles. Every pawnbroker who fails, refuses, or neglects to produce for inspection his register, or to exhibit all articles received by him in pledge, or his account of sales, to any officer holding a warrant authorizing him to search for personal property, or the order of a committing magistrate directing such officer to inspect such register, or examine such articles or account of sales, or appointed by the sheriff of the county or the head of the police department of any city, city and county, or town to inspect such register, or examine such articles or account of sales, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 668.

The change consists in the insertion, after the word "sales," of the words "or appointed by the sheriff of the county, or the head of the police department of any city, city and county, or town, to inspect such registry, or examine such articles on account of sales." The change is suggested and advocated by the sheriffs' organization of this state.—Code Commissioner's Note.

§ 344. Junk dealers, application of code sections to. Sections three hundred and thirty-nine, and three hundred and forty-two, and three hundred and forty-three of the Penal Code are applicable to the persons carrying on the business of junk dealers, their clerks, employees, or ser-

vants, and to persons acting as brokers or commission agents for such persons, and apply to their transactions of purchase and sale as well as to those of pledge or mortgage. En. Stats. 1901, 75.

## CHAPTER XII.

### OTHER INJURIES TO PERSONS.

- § 346. Acts of intoxicated physicians.
- § 347. Willfully poisoning food, medicine, or water.
- § 347a. Poisonous substance. Sale of.
- § 348. Mismanagement of steamboats.
- § 349. Mismanagement of steam-boilers.
- § 349a. Frauds in stamping and labeling produce and manufactured goods.
- § 350. Counterfeiting trade-marks.
- § 351. Selling goods which bear counterfeit trade-marks.
- § 352. Definition of "counterfeited trade-marks," etc.
- § 353. "Trade-mark" defined.
- § 354. Refilling casks, etc., bearing trade-mark.
- § 354½. Selling or refilling casks, etc., containing trade-mark.
- § 354¾. Destroying or defacing trade-mark.
- § 355. Defacing marks upon wrecked property and destroying bills of lading.
- § 356. Defacing marks upon logs, lumber, or wood.
- § 357. Altering brands.
- § 357½. Changing or defacing brands on domestic animals a misdemeanor.
- § 358. Frauds in affairs of special partnership.
- § 359. Contracting or solemnizing forbidden marriages.
- § 360. Performing marriage ceremony before license is presented; failure to record license and marriage certificate. False record of marriage return.
- § 361. Cruel treatment of lunatics, etc.
- § 362. Refusing to issue or obey writ of habeas corpus.
- § 363. Reconfining persons discharged on habeas corpus.
- § 364. Concealing persons entitled to benefit of habeas corpus.
- § 365. Innkeepers and carriers refusing to receive guests.
- § 366. Counterfeiting quicksilver stamps.
- § 367. Selling debased quicksilver.
- § 367a. Unauthorized use of dramatic or musical compositions.

§ 346. Acts of intoxicated physicians. Every physician who, in a state of intoxication, does any act as such physician to another person by which the life of such other person is endangered, is guilty of a misdemeanor. En. February 14, 1872.

§ 347. Willfully poisoning food, medicine, or water. Every person who willfully mingles any poison with any

food, drink, or medicine, with intent that the same shall be taken by any human being, to his injury, and every person who willfully poisons any spring, well, or reservoir of water, is punishable by imprisonment in the state prison for a term not less than one nor more than ten years. En. February 14, 1872.

Act to regulate sale of poisons: See post, Appendix, title Poisons.

§ 347a. **Poisonous substance, sale of.** No person must retail any arsenic, corrosive sublimate, hydrocyanic acid, cyanide of potassium, strychnia, essential oil of bitter almonds, opium, aconite, belladonna, conium, nux vomica, henbane, tansy, savin, ergot, cottonroot, digitalis, chloroform, chloral hydrate, or any preparation, compound, salt, extract or tincture, of such substances, except preparations of opium containing less than two grains to the fluid ounce, white precipitate, red precipitate, red and green iodides of mercury, colchicum, cantharides, oxalic acid, croton oil, sulphate of zinc, sugar of lead, carbolic acid, sulphuric acid, muriatic acid, nitric acid, phosphorus, or any preparation, compound, salt, extract, or tincture, of such substances, without first distinctly labeling the bottle, box, vessel, or package, and the wrapper or cover thereof, in which such substance is contained, with the common or usual name thereof, together with the word "poison," and the name and place of business of the seller. Nor must any such sale be made to any person, unless it is found, on due inquiry, that he is aware of its poisonous character, and that it is to be used for a legitimate purpose. Nor must any person retail any of such substances, unless, before delivering the same, he makes, or causes to be made, in a book kept for that purpose only, an entry stating the date of the sale, the name and address, of the purchaser, the name and quantity of the substance sold, the purpose for which it is stated by the purchaser to be required, and the name of the dispenser. Such book must always be open to inspection by the proper authorities. A person dispensing any of the substances enumerated must ascertain, by due inquiry, whether the name and address given by the person receiving the same are his true name and address, and for that purpose may require such person to be identified. Every person who violates any of the provisions of this section is guilty of a misdemeanor, and punishable by a fine not exceeding five hundred dollars



or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. Nothing in this section contained applies to the prescriptions of any physician authorized to practice medicine under the laws of this state. En. Stats. 1905, 765.

This is a codification of the existing statute (1880, page 102.)—Code Commissioner's Note.

**§ 348. Mismanagement of steamboats.** Every captain or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, or any apparatus or machinery connected therewith, by which bursting or breaking human life is endangered, is guilty of a felony. En. February 14, 1872. Am'd. 1873-4, 431.

**§ 349. Mismanagement of steam-boilers.** Every engineer or other person having charge of any steam-boiler, steam-engine, or other apparatus for generating or employing steam, used in any manufactory, railway, or other mechanical works, who willfully, or from ignorance, or gross neglect, creates, or allows to be created such an undue quantity of steam as to burst or break the boiler or engine, or apparatus, or cause any other accident whereby human life is endangered, is guilty of a felony. En. February 14, 1872. Am'd. 1873-4, 431.

As to personal injuries, see Civ. Code, secs. 43, 1708, 1714, 1969-1971, 2096, 2100.

**§ 349a. Frauds in stamping and labeling produce and manufactured goods.** Any person engaged in the production, manufacture, or sale of any article of merchandise made in whole or in part in this state, who, by any imprint, label, trademark, tag, stamp, or other inscription or device, placed or impressed upon such article, or upon the cask, box, case, or package containing the same, misrepresents or falsely states the kind, character, or nature of the labor employed or used, or the extent of the labor employed or used, or the number or kind of persons exclusively employed or used, or that a particular or distinctive class or character of laborers was wholly and exclusively used or employed, when, in fact, another class, or character, or distinction of laborers was

used or employed, either jointly or in anywise supplementary to such exclusive class, character, or distinction of laborers, in the production or manufacture of the article to which such imprint, label, trademark, tag, stamp, or other inscription or device is affixed, or upon the cask, box, case, or package containing the same, is guilty of a misdemeanor, and punishable by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than twenty nor more than ninety days, or both. En. States. 1905, 669.

This is a codification of the statute of 1877-8, page 17.—Code Commissioner's Note.

§ 350. **Counterfeiting trade-marks.** Every person who willfully reproduces, copies, imitates, forges, or counterfeits, or procures to be reproduced, copied, imitated, forged, or counterfeited, any trade-mark usually affixed by any person to his goods, which has been duly recorded in the office of the Secretary of State, or with the Commissioner of Patents in the United States Patent Office, or any label or brand, composed in whole or in part of a reproduction of said trade-mark, or who affixes the same to goods of essentially the same descriptive properties and qualities as those referred to in the registration of such trade-mark, with intent to pass off, or to assist other persons to pass off, any goods to which such reproduced, copied, imitated, forged, or counterfeited trade-mark, or label, or brand is affixed, or intended to be affixed, as the goods of the person, firm, company, or corporation owning the said trade-mark, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1885, 57; 1897, 212.

Act to prevent fraud in stamping and labeling produce and manufactured goods: See post, Appendix, title Manufactured Goods.

Trade-marks: See Civ. Code, secs. 655, 991; and Pol. Code, secs. 3196-3201.

§ 351. **Selling goods which bear counterfeit trade-marks.** Every person who sells, or keeps for sale, or manufactures, or prepares, for the purpose of sale, any goods upon or to which any reproduced, copied, imitated, forged, or counterfeited trade-mark, or label, or brand, composed in whole or in part of such a reproduced, copied, imitated, forged, or counterfeited trade-mark, has been affixed, after such trade-



mark has been recorded in the office of the secretary of state, or with the commissioner of patents in the United States patent office, intending to represent such goods as the genuine goods of the person, firm, company, or corporation owning the said trade-mark, knowing the same to be reproduced, copied, imitated, forged, or counterfeited, is guilty of a misdemeanor. En. February 1, 1872. Am'd. 1885, 57; 1897, 213.

Genuineness of trade-mark warranted by sale of article bearing it: Civ. Code, sec. 1772.

§ 352. Definition of "counterfeited trade-marks," etc. The phrases "forged trade-mark" and "counterfeited trade-mark," or their equivalents, as used in this chapter, include every alteration or imitation of any trade-mark so resembling the original as to be likely to deceive. En. February 14, 1872.

Cal. Rep. Cit. 43, 167; 64, 342.

§ 353. "Trade-mark" defined. The phrase "trade-mark," as used in the three preceding sections, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description. En. February 14, 1872.

§ 354. Refilling casks, etc., bearing trade-mark. Every person who has in his possession, or who uses any cask, bottle, vessel, case, cover, label, brand, or other thing bearing, or having in any way connected with it, the trade-mark of another, which has been duly recorded in the office of the secretary of state, or with the commissioner of patents in the United States patent office, or the trade name of another, for the purpose of disposing of any article other than that which such cask, bottle, vessel, case, cover, label, brand, or other thing originally contained, or is connected with by the owner of such trade-mark or trade name, with intent to deceive or defraud, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1897, 213.

Cal. Rep. Cit. 128, 443.

Counterfeiting trade-marks: Ante. secs. 350, 351.

§ 354½. **Selling or refilling casks, etc., containing trade-mark.** Every person who willfully sells, or traffics in any cask, keg, bottle, vessel, siphon, can, case, or other package bearing the duly filed trade-mark or name of another, printed, branded, stamped, engraved, etched, blown, or otherwise attached or produced thereon, or refills any such cask, keg, bottle, vessel, siphon, can, case, or other package with intent to defraud the owner thereof, without the consent of the owner thereof, or unless the same shall have been purchased from the owner thereof, is guilty of a misdemeanor. En. Stats. 1899, 103.

§ 354¾. **Destroying or defacing trade-mark.** Every person who shall willfully deface, erase, obliterate, cover up, or otherwise remove, destroy, or conceal the duly filed trade-mark, or name of another, printed, branded, stamped, engraved, etched, blown, impressed, or otherwise attached to, or produced upon any cask, keg, bottle, vessel, siphon, can, case, or other package, for the purpose of selling or trafficking in such cask, keg, bottle, vessel, siphon, can, case, or other package, or refilling such cask, keg, bottle, vessel, siphon, can, case, or other package, with intent to defraud the owner thereof, without the consent of the owner, or unless the same shall have been purchased from the owner, is guilty of a misdemeanor. En. Stats. 1899, 86.

§ 355. **Defacing marks upon wrecked property and destroying bills of lading.** Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading, or other document tending to show the ownership, is guilty of a misdemeanor. En. February 14, 1872.

Wrecks and wrecked property: Pol. Code, secs. 2403, et seq.

§ 356. **Defacing marks upon logs, lumber, or wood.** Every person who cuts out, alters, or defaces any mark made upon any log, lumber, or wood, or puts a false mark thereon with intent to prevent the owner from discovering its identity, is guilty of a misdemeanor. En. February 14, 1872.

Floating lumber: Pol. Code, secs. 2389 et seq.

§ 357. **Altering brands.** Every person who marks or brands, alters, or defaces the mark or brand of any horse,

mare, colt, jack, jennet, mule, bull, ox, steer, cow, or calf belonging to another, with intent thereby to steal the same, or to prevent identification thereof by the true owner, is punishable by imprisonment in the state's prison for not less than one nor more than five years. En. February 14, 1872. Am'd. 1901, 329.

Cal. Rep. Cit. 144, 47; 145, 111.

Marks and brands: Pol. Code, secs. 3167-3172, 3182-3185.

§ 357½. **Changing or defacing brands on domestic animals a misdemeanor.** Every person who marks or brands, alters or defaces the mark or brand of any sheep, goat, hog, shoat, or pig belonging to another, with intent thereby to steal the same, or to prevent identification thereof by the true owner, is guilty of a misdemeanor. En. Stats. 1901, 327.

§ 358. **Frauds in affairs of special partnership.** Every member of a special partnership who commits any fraud in the affairs of the partnership, is guilty of a misdemeanor. En. February 14, 1872.

Special partnership: See Civ. Code, secs. 2477 et seq.

§ 359. **Contracting or solemnizing forbidden marriages.** Every person authorized to solemnize marriage, who willfully and knowingly solemnizes any incestuous or other marriage forbidden by law, is punishable by fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than one year, or by both. En. February 14, 1872.

Cal. Rep. Cit. 75, 12.

Incestuous marriage defined: See Civ. Code, sec. 59.

Punishment of parties to incestuous marriage: See ante, sec. 285.

§ 360. **Performing marriage ceremony before license is presented; failure to record license and marriage certificate; false record of marriage return.** Every person authorized to solemnize any marriage, who solemnizes such marriage without first being presented with the marriage license, as required by section seventy-two of the Civil Code of this state,

or who willfully makes a false return of any marriage or pretended marriage to the recorder; or who, having solemnized a marriage, fails for more than thirty days, to file with such recorder the marriage license with the certificate endorsed thereon, as required by sections seventy-three and seventy-four of the Civil Code of this state; and every person who willfully makes a false record of any marriage return, is punishable as provided in the preceding section. En. February 14, 1872. Am'd 1905, 669.

The change consists of the clause making it criminal to solemnize a marriage without being first presented with a marriage license, and the clause making it criminal to fail to file for record the marriage license and the certificate of marriage. The last of these amendments, besides being otherwise proper, is necessary in order to give effect to the amendment to section 79a of the Civil Code, which provides that a license must be procured in every case, and regardless of whether the parties are, or are not, members of some particular religious denomination having, as such, some peculiar mode of celebrating marriage.—Code Commissioner's Note.

Cal. Rep. Cit. 75, 12.

Certificate of marriage: Civ. Code, sec. 73.

Recording certificate of marriage: Civ. Code, sec. 74.

Person authorized to solemnize marriage: Civ. Code, sec. 70.

§ 361. **Cruel treatment of lunatics, etc.** Every person guilty of any harsh, cruel, or unkind treatment of, or any neglect of duty towards, any idiot, lunatic, or insane person, is guilty of a misdemeanor. En. February 14, 1872.

§ 362. **Refusing to issue or obey writ of habeas corpus.** Every officer or person to whom a writ of habeas corpus may be directed, who, after service thereof, neglects or refuses to obey the command thereof, is guilty of a misdemeanor. En. February 14, 1872.

§ 362. **Refusing to issue or obey writ of habeas corpus.** Every person who, either solely or as member of a court, knowingly and unlawfully recommits, imprisons, or restrains of his liberty, for the same cause, any person who has been

discharged upon a writ of habeas corpus, is guilty of a misdemeanor. En. February 14, 1872.

False imprisonment: See post, sec. 236.

Habeas corpus, writ of: Post, secs. 1473 et seq.

§ 364. **Concealing persons entitled to benefit of habeas corpus.** Every person having in his custody, or under his restraint or power, any person for whose relief a writ of habeas corpus has been issued, who, with the intent to elude the service of such writ, or to avoid the effect thereof, transfers such person to the custody of another, or places him under the power or control of another, or conceals or changes the place of his confinement or restraint, or removes him without the jurisdiction of the court or judge issuing the writ, is guilty of a misdemeanor. En. February 14, 1872.

Habeas corpus: See chapter concerning the writ of: Post, secs. 1473 et seq.

§ 365. **Innkeepers and carriers refusing to receive guests.** Every person, and every agent or officer of any corporation carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor. En. February 14, 1872.

Common carriers of passengers: Civ. Code, secs. 2168-2176, 2180-2191.

Innkeepers: Civ Code, secs. 1859 et seq.

Act punishing refusal to sell ticket: See post, Appendix, title Emigration.

§ 366. **Counterfeiting quicksilver stamps.** Every person who counterfeits, or who willfully uses the counterfeited seal or stamp of any person engaged in manufacturing or selling quicksilver, is guilty of a felony. En. February 14, 1872.

See ante, secs. 349, 350.

§ 367. **Selling debased quicksilver.** Every person who willfully sells, or offers for sale as pure, any debased or adulterated quicksilver, is guilty of a misdemeanor. En. February 14, 1872.

See ante, secs. 350 et seq.

§ 367a. **Unauthorized use of dramatic or musical compositions.** Any person who causes to be publicly performed or represented for profit any unpublished or undedicated dramatic composition or dramatic-musical composition known as an opera, without the consent of its owner or proprietor, or who, knowing that such dramatic or musical composition is unpublished or undedicated, and without the consent of its owner or proprietor, permits, aids, or takes part in such a performance or representation, or who sells a copy or a substantial copy of any unpublished, undedicated or copyrighted dramatic composition, or musical or dramatic-musical composition, known as an opera, without the consent of the author or proprietor of such dramatic or dramatic-musical composition shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty (50) dollars, and not more than three hundred (300) dollars, or be imprisoned for not less than thirty (30) days or more than three (3) months, or both such fine and imprisonment. En. Stats. 1905, 248.

367b (new). Whosoever being a student, or being a person in attendance at any public, private, parochial, or military school, college, or other educational institution, conspires to haze or engages in hazing or commit any act that injures, degrades or disgraces, or tends to injure, degrade, or disgrace any fellow student or person attending such institution shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty nor more than one hundred dollars, or imprisoned in the county jail not more than six months, or both. (In effect 60 days from and after March 22, 1907.)





## TITLE X.

## OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

- § 368. Death from explosions, etc.
- § 369. Death from collision on railroads.
- § 369a. Street-cars to have proper brakes and fenders.
- § 369b. Transportation of cattle, etc.; confinement without unloading and feeding; charges a lien upon animals.
- § 369d. Closing of gates at railroad crossings.
- § 369e. Animals feeding along railroad tracks.
- § 369f. Railroad employee intoxicated while on duty.
- § 369g. Driving vehicles along track of railroad.
- § 370. "Public nuisances" defined.
- § 371. Unequal damage.
- § 372. Maintaining a nuisance, a misdemeanor.
- § 373. Establishing or keeping pest-houses within cities, towns, etc.
- § 373a. Public nuisance; penalty.
- § 374. Putting dead animals in streets, rivers, etc.
- § 374½. Discharging coal tar or similar products in navigable waters.
- § 375. Keeping gunpowder, etc., unlawfully.
- § 375a. Record of sale of explosives.
- § 376. Violation of quarantine laws by masters of vessels.
- § 377. Willful violation of health laws.
- § 377a. State Board of Health, violation of rules of, relating to quarantine, etc.
- § 377b. State Board of Health, violation of rules of, relating to pollution of water.
- § 377c. State Board of Health, violation of rules of, relating to pollution of ice.
- § 378. Neglecting to perform duties under health law.
- § 379. Unlicensed piloting.
- § 380. Apothecary omitting to label drugs, or labeling them wrongfully, etc.
- § 381. Putting extraneous substances in packages of goods usually sold by weight, with intent to increase weight.
- § 381a. Inaccurate or false tests as to dairy products, penalty.
- § 381b. State dairy bureau.
- § 382. Adulterating food, drugs, liquors, etc.
- § 383. Disposing of adulterated or tainted food or drink or drug; "drug," "food" defined.
- § 383a. Sale of process or renovated butter.
- § 384. Setting fire to woods, grain, etc.
- § 384a. Keeping fires within certain limits.
- § 384b. Camp fire.
- § 384c. Animals injured by persons hunting.
- § 385. Obstructing attempts to extinguish fires.
- § 386. Maintaining bridge or ferry without authority.
- § 387. Violating condition of undertaking to keep ferry.
- § 388. Riding or driving faster than a walk on toll-bridges.
- § 389. Crossing toll-bridges, etc., without paying toll.
- § 390. Engineer of locomotive engine omitting to ring bell when crossing highway.
- § 391. Intoxication of engineers, conductors, or drivers of locomotives or cars.
- § 392. Placing passenger cars in front of freight cars.
- § 393. Violation of duty by employees of railroad companies.
- § 394. Exposing person infected with any contagious disease in a public place.
- § 395. Frauds practiced to affect the market price.

- § 396. Racing upon highways.
- § 397. Selling liquor to Indians.
- § 397b. Liquors. Selling of to minors, permitting minor to visit saloons; note to apply to parents.
- § 398. Selling firearms and ammunition to Indians.
- § 399. Death from mischievous animals.
- § 400. Exhibiting deformities of person.
- § 400. Aiding or encouraging suicide a felony.
- § 401. Aiding in suicide.
- § 401a. Cubic feet of space in rooms.
- § 402. Using or exposing animal with glanders.
- § 402 $\frac{1}{4}$ . Adulterating candy.
- § 402 $\frac{1}{2}$ . Animal having glanders to be killed.
- § 402 $\frac{3}{4}$ . Unsafe scaffolding, penalty for erecting.
- § 402a. Adulteration of candies.
- § 402b. Diseased animal to be killed.
- § 402c. Unsafe scaffolding, ladders, etc.
- § 402d. Animals affected with contagious diseases to be kept within enclosure.

**§ 368. Death from explosions, etc.** Every person having charge of any steam-boiler or steam-engine, or other apparatus for generating or employing steam, used in any manufactory, or on any railroad, or in any vessel, or in any kind of mechanical work, who willfully, or from ignorance or neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is produced, is punishable by imprisonment in the state prison for not less than one nor more than ten years. En. February 14, 1872.

Act to protect life and property against careless use of explosives: See post, Appendix, title Explosives.

**§ 369. Death from collision on railroads.** Every conductor, engineer, brakeman, switchman, or other person having charge, wholly or in part, of any railroad, car, locomotive, or train, who (willfully) or negligently suffers or causes the same to collide with another car, locomotive, or train, or with any other object or thing whereby the death of a human being is produced, is punishable by imprisonment in the state prison for not less than one nor more than ten years. En. February 14, 1872.

**§ 369a. Street-cars to have proper brakes and fenders.** Any person, company, or corporation, operating cars on the streets of cities or towns, or on the county roads within the state, for the conveyance of passengers, propelled by means of wire ropes attached to stationary engines, or by electricity or compressed air, who runs, operates, or uses any car or dummy, unless each car and dummy, while in use, is fitted

with a brake capable of bringing such car to a stop within a reasonable distance, and a suitable fender, or appliance placed in front or attached to the trucks for such dummy or car, for the purpose of removing and clearing obstructions from the track, and preventing any obstacles, obstructions, or person on the track from getting under such dummy or car, and removing the same out of danger, and out of the way of such dummy or car, is guilty of a misdemeanor. Where the board of supervisors of any county, or the city council or other governing body of any city, by ordinance, order, or resolution, prescribes the fender or brake to be used as aforesaid, then a compliance with such ordinance, order, or resolution must be deemed a full compliance with the provisions of this section. En. Stats. 1905, 766.

This is a codification of the statute of 1899, page 183.—Code Commissioner's Note.

**§ 369b. Transportation of cattle, etc., confinement without unloading and feeding; charges a lien upon animals.** Any officer, agent or conductor of any company or person operating any railroad in this state, who in carrying and transporting cattle, sheep, or swine in carload lots, confines the same in cars for a longer period than thirty-six consecutive hours, without unloading for rest, water and feeding, for a period of at least ten consecutive hours, is guilty of a misdemeanor. In estimating such time of confinement, the period during which the animals have been confined without such rest on connecting roads from which they are received, must be computed. In case the owner or person in charge of such animals refuses or neglects to pay for the care and feed of animals so rested, the company or person operating such railroad may charge the expense thereof to the owner or consignee and retain a lien upon the animals thereof until the same is paid. En. Stats. 1905, 672.

This is a codification of the statute of 1877-8, page 969.—Code Commissioner's Note.

**§ 369d. Closing of gates at railroad crossings.** Any person who enters upon or crosses any railroad, at any private passway, which is inclosed by bars or gates, and neglects to leave the same securely closed after him, is guilty of a misdemeanor. En. Stats. 1905, 766.

369d, 369e, 369f, 369g. Codification of police regulations in the statute of 1877-8, page 969.—Code Commissioner's Note.

**§ 369e. Animals feeding along railroad tracks.** Any person who leads, drives, or conducts any beast along the

track of a railroad, except where the railroad is built within the limits of a public highway, or who places, or having the right to prevent it, suffers any animal to be placed within the fences thereof for grazing or other purposes, is guilty of a misdemeanor. En. Stats. 1905, 767.

See note to § 369d, ante.

§ 369f. **Railroad employee intoxicated while on duty.** Any person employed upon any railroad as engineer, conductor, baggage-master, brakeman, switchman, fireman, bridge-tender, flagman, or signalman or having charge of the regulation or running of trains upon such railroad, in any manner whatever, who becomes or is intoxicated while engaged in the discharge of his duties, is guilty of a misdemeanor; and if any person so employed as aforesaid, by reason of such intoxication, does any act, or neglects any duty, which act or neglect causes the death of, or bodily injury to, any person or persons, he is guilty of a felony. En. Stats. 1905, 767.

See note to § 369d, ante.

§ 369g. **Driving vehicles along track of railroad.** Any person who rides, drives, or propels any vehicle upon and along the track of any railroad, through or over its private right of way, without the authorization of its superintendent or other officer in charge thereof, is guilty of a misdemeanor. En. Stats. 1905, 767.

See note to § 369d, ante.

§ 370. **“Public nuisances” defined.** Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a public nuisance. En. February 14, 1872. Am'd. 1873-4, 431.

Cal. Rep. Cit. 68, 413; 72, 53; 87, 92; 87, 93; 87, 96; 92, 574; 107, 481; 113, 150; 116, 399; 121, 513.

Public nuisance: Compare with Civ. Code, sec. 3480. See also, secs. 3490-3495 of that code upon this subject generally.

Nuisance defined: See Code Civ. Proc., sec. 731.

**372a (new).** It shall be a misdemeanor for any person to discharge mucus from the nose or mouth or spit upon any sidewalk, of any public street or highway or upon any part of any public building or railroad train, street car, trolley, ferryboat, steamer, boat or other vessel or vehicle used for the transportation of the public. (In effect March 1, 1907.)



§ 371. **Unequal damage.** An act which affects an entire community or neighborhood, or any considerable number of persons, as specified in the last section, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal. En. February 14, 1872. Am'd. 1873-4, 432.

§ 372. **Maintaining a nuisance, a misdemeanor.** Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 72, 53; 87, 92; 87, 93; 92, 574.

§ 373. **Establishing or keeping pest-houses within cities, towns, etc.** Every person who establishes or keeps, or causes to be established or kept, within the limits of any city, town, or village, any pest-house, hospital, or place for persons affected with contagious or infectious diseases, is guilty of a misdemeanor. En. February 14, 1872.

§ 373a. **Public nuisance; penalty.** Every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and every person occupying or leasing the property or premises of another who maintains, permits or allows a public nuisance to exist thereon, after reasonable notice in writing from a health officer or district attorney to remove, discontinue or abate the same has been served upon such person, is guilty of a misdemeanor, and shall be punished accordingly; and the existence of such nuisance for each and every day after the service of such notice shall be deemed a separate and distinct offense, and it is hereby made the duty of the district attorney to prosecute all persons guilty of violating this section by continuous prosecutions until the nuisance is abated and removed. En. Stats. 1903, 163.

§ 374. **Putting dead animals in streets, rivers, etc.** Every person who puts the carcass of any dead animal, or the offal from any slaughter pen, corral, or butcher-shop, into any river, creek, pond, reservoir, stream, street, alley, public highway, or road in common use, or who attempts to destroy the same by fire within one-fourth of a mile of any city, town, or village, except it be in a crematory,

the construction and operation of which is satisfactory to the board of health in such city, town, or village; and any person who puts any water-closet or privy, or the carcass of any dead animal, or any offal of any kind, in or upon the borders of any stream, pond, lake, or reservoir from which water is drawn for the supply of the inhabitants of any city, city and county, or any town in this state, so that the drainage from such water-closet, privy, carcass, or offal may be taken up by or in such stream, pond, lake, or reservoir; or who allows any water-closet or privy, or carcass of any dead animal, or any offal of any kind, to remain in or upon the borders of any such stream, pond, lake, or reservoir within the boundaries of any land owned or occupied by him, so that the drainage from such water-closet, privy, carcass, or offal may be taken up by or in such stream, pond, lake, or reservoir; or who keeps any horses, mules, cattle, swine, sheep, or live-stock of any kind, penned, corralled, or houses on, over, or on the borders of any such stream, pond, lake, or reservoir, so that the waters thereof become polluted by reason thereof; or who bathes in any such stream, pond, lake, or reservoir; or who by any other means fouls or pollutes the waters of any such stream, pond, lake, or reservoir, is guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in section three hundred and seventy-seven. En. February 14, 1872. Am'd. 1875-6, 111; 1893, 66; 1905, 767.

The change consists in the substitution of the word "crematory" for "cemetery."—Code Commissioner's Note.

Cal. Rep. Cit. 105, 637; 107, 226; 115, 450; 115, 451; 136, 16.

§ 374½. Discharging coal tar or similar products in navigable waters. Every person, firm, association, or corporation which shall discharge or deposit, or shall cause or suffer to be discharged or deposited, or to pass, in or into the waters of any navigable bay, or river, in this state, any coal tar or refuse or residuary product of coal, petroleum, asphalt, bitumen or other carbonaceous material or substance, is guilty of a misdemeanor, and for each offense is punishable by imprisonment in the county jail for not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment. En. Stats. 1901, 813.

§ 375. Keeping gunpowder, etc., unlawfully. Every person who makes or keeps gunpowder, nitro-glycerine, or



~ 374. Every person who puts the carcass of any dead animal, or the offal from any slaughter pen, corral, or butcher shop into any river, creek, pond, reservoir, stream, street, alley, public highway, or road in common use, or who attempts to destroy the same by fire within one fourth of a mile of any city, town, or village, except it be in a crematory, the construction and operation of which is satisfactory to the board of health of such city, town, or village; and every person who puts any water-closet or privy, or the carcass of any dead animal, or any offal of any kind, in or upon the borders of any stream, pond, lake, or reservoir from which water is drawn for the supply of any portion of the inhabitants of this state, so that the drainage of such water-closet, privy, carcass or offal may be taken up by or in such stream, pond, lake, or reservoir; or who allows any water-closet or privy, or carcass of any dead animal, or any offal of any kind, to remain in or upon the borders of any such stream, pond, lake, or reservoir within the boundaries of any land owned or occupied by him, so that the drainage from any such water-closet, privy, carcass, or offal, may be taken up by or in such stream, pond, lake, or reservoir; or who keeps any horses, mules, cattle, swine, sheep, or live stock of any kind, penned, corralled, or housed on, over, or on the borders of any such stream, pond, lake, or reservoir, so that the waters thereof become polluted by reason thereof; or who bathes in any such stream, pond, lake, or reservoir; or who by any other means fouls or pollutes the waters of any such stream, pond, lake, or reservoir, is guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in section three hundred and seventy-seven. (In effect March 1, 1907.)



other highly explosive substance, within any city or town, or who carries the same through the streets thereof, in any quantity or manner such as is prohibited by law, or by any ordinance of such city or town, is guilty of a misdemeanor. En. February 14, 1872.

§ 375a. **Record of sale of explosives.** It is the duty of each and every person, association, joint stock company, and corporation, manufacturing, storing, selling, transferring, disposing of, or in any manner dealing in, or with, or using, or giving out nitro-glycerine, dynamite, vigorite, hercules powder, giant powder, or other high explosive, by whatever name known, to keep at all times an accurate journal, or book of record, in which must be entered, from time to time, as it is made, each and every sale, delivery, transfer, gift, or other disposition made by such person, firm, association, joint stock company, or corporation, in the course of business or otherwise, of any quantity of such explosive substance. Such journal or record book must show, in a legible handwriting, to be entered therein at the time, a complete history of each transaction, stating the name and quantity of the explosive sold, delivered, given away, transferred, or otherwise disposed of; the name, place of residence, or business of the purchaser, or transferee; the name of the individual to whom delivered, with his or her address, with a description of such individual sufficient for identification. Such journal or record book must be kept by the person, firm, association, joint stock company, or corporation so selling, delivering, or otherwise disposing of such explosive substance, or substances, in his or their principal office or place of business at all times subject to the inspection and examination of the peace officers, or other police authorities of the state, county, or municipality where the same is situated, on proper demand made therefor. Any failure or neglect to keep such book, or to make the proper entries therein at the time of the transaction, as herein provided, or to exhibit the same to the peace officers or other police authorities on demand, is deemed a misdemeanor, and punishable accordingly. In addition to such punishment, and as a cumulative penalty, such person, firm, association, joint stock company, or corporation so offending, shall forfeit, for each offense, the sum of two hundred and fifty dollars, to be recovered in any court of competent jurisdiction. The party instituting an action for such forfeiture shall not be entitled to dismiss the same without consent of the court before which the suit

has been instituted. Nor shall any judgment recovered be settled, satisfied, or discharged, save by order of such court, after full payment into court, and all moneys so collected must be paid to the party bringing the suit. En. Stats. 1905, 768.

This is a codification of sections 1, 2, 3, and 4 of the statute of 1887, page 110.—Code Commissioner's Note.

**§ 376. Violation of quarantine laws by master of vessel.**

Every master of a vessel subject to quarantine or visitation by the quarantine officer, who refuses or omits:

1. To proceed with and anchor his vessel at the place assigned for quarantine, at the time of his arrival;

2. To submit his vessel, cargo, and passengers to the examination of the quarantine officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought, respectively, to be subject; or,

3. To remain with his vessel at the quarantine during the period assigned for her quarantine, and while at quarantine to comply with the regulations prescribed by law, and with such as any health officer, by virtue of authority given him by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers, or crew;

Is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding two thousand dollars, or both. En. February 14, 1872. Am'd. 1877-8, 116; 1905, 769.

The change consists in the omission after the word "officer," of the words "arriving in the port of San Francisco," thus making the statute general.—Code Commissioner's Note.

Quarantine and health regulations for San Francisco: Pol. Code, secs. 3004 et seq.

Shipmaster's duties: Pol. Code, secs. 3013, 3014, 3016-3019.

**§ 377. Willful violation of health laws.** Every person who is charged with a duty relating to the registration of deaths, under chapter three, title seven, of the act to establish a Political Code, approved March 12th, eighteen hundred and seventy-two, who—

1. Willfully fails to keep a registry of the name, age, residence, and time of death of a decedent; or,

2. Willfully fails to register with the county recorder a certified copy of such register, as is provided for in said chapter; or,

3. Willfully inters, cremates, or otherwise disposes of any human body, in any city, county, or city and county, without having first obtained a permit, as provided for in said chapter; or,

4. Willfully grants a permit for the interment, cremation, or disposition of a dead human body, without the certificate provided for in said chapter; or,

5. Willfully violates any of the laws of this state relating to the preservation of the public health;

Is guilty of a misdemeanor, and is, unless a different punishment for such violation is prescribed by this code, punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment. En. February 14, 1872. Am'd. 1889, 34.

Cal. Rep. Cit. 68, 413; 84, 306; 84, 310.

Preservation of public health: Pol. Code, secs. 2978 et seq.

§ 377a. State board of health, violation of rules of, relating to quarantine, etc. Every person who after notice shall violate, or who, upon the demand of any public health officer, shall refuse or neglect to conform to any rule, order or regulation prescribed by the state board of health respecting the quarantine, or disinfection of persons, animals, things or places, shall be guilty of a misdemeanor. En. Stats. 1905, 143.

§ 377b. State board of health, violation of rules of, relating to pollution of water. Any person who shall violate or refuse or neglect to conform to any sanitary rule, order or regulation prescribed by the state board of health for the prevention of the pollution of springs, streams, rivers, lakes, wells, or other waters used or intended to be used for human or animal consumption shall be guilty of a misdemeanor. En. Stats. 1905, 138.

§ 377c. State board of health, violation of rules of, relating to pollution of ice. Any person who shall violate, or refuse, or neglect, to conform to any sanitary rule, order or regulation prescribed by the state board of health for the prevention of the pollution of ice or the sale or disposition of polluted ice offered, kept or intended for public use or consumption, shall be guilty of a misdemeanor. En. Stats. 1905, 138.

§ 378. **Neglecting to perform duties under health law.** Every person charged with the performance of any duty under the laws of this state relating to the preservation of the public health, who willfully neglects or refuses to perform the same, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 84, 310.

Preservation of public health: See Pol. Code, secs. 2978-3064.

§ 379. **Unlicensed piloting.** Every person, not the master or owner, or not authorized to act as pilot under the laws of this state, who pilots or offers to pilot any vessel to or from any port of this state for which there are commissioned or licensed pilots, or who pilots or offers to pilot any vessel to or from any port other than that for which he is commissioned or licensed, and for which there are pilots so commissioned or licensed, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1873-4, 432.

See Pol. Code, secs. 2429-2447, 2457-2470, 2476-2491.

§ 380. **Apothecary omitting to label drugs, or labeling them wrongfully, etc.** Every apothecary, druggist, or person carrying on business as a dealer in drugs or medicines, or person employed as clerk or salesman by such person, who, in putting up any drugs or medicines, or making up any prescription, or filling any order for drugs or medicines, willfully, negligently, or ignorantly omits to label the same, or puts an untrue label, stamp, or other designation of contents, upon any box, bottle, or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor, or if death ensues, is guilty of a felony. En. February 14, 1872.

An act to regulate the sale of certain poisonous substances, approved April 16, 1880; 1880, 102 (Ban. ed. 341). See post, Appendix, title Poisons. See, also, act of 1891, 86.

§ 381. **Putting extraneous substances in packages of goods usually sold by weight, with intent to increase weight.** Every person who, in putting up in any bag, bale, box,

barrel, or other package, any hops, cotton, wool, grain, hay, or other goods usually sold in bags, bales, boxes, barrels or packages by weight, puts in or conceals therein anything whatever, for the purpose of increasing the weight of such bag, bale, box, barrel, or package, with intent thereby to sell the goods therein or to enable another to sell the same, for an increased weight, is punishable by fine of not less than twenty-five dollars for each offense. En. February 14, 1872. Am'd. 1873-4, 432.

Act regulating sale of imitation olive oil: See post, Appendix, title Olive Oil.

Adulteration, acts relating to: See post, Appendix, title Adulteration.

§ 381a. **Inaccurate or false tests as to dairy products, penalty.** Any person, or persons, whether as principals, agents, managers, or otherwise, who buy or sell dairy products, or deal in milk, cream, or butter, and who buy or sell the same upon the basis of their richness or weight or the percentage of cream, or butter-fat contained therein, who use any apparatus, test bottle or other appliance, or who use the "Babcock test" or machine of like character for testing such dairy products, cream or butter, which is not accurate and correct, or which gives wrong or false percentages, or which is calculated in any way to defraud or injure the person with whom he deals, is guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred dollars (\$500.00) or imprisoned in the county jail not more than six (6) months. En. Stats. 1901, 324.

§ 381b. **State dairy bureau.** It shall be the duty of the state dairy bureau, now existing under the laws of this state, to enforce the provisions of section three hundred and eighty-one a of the Penal Code and cause the prosecution of persons whom it knows, or has reason to believe, are guilty of violating the provisions of said section of the Penal Code. It shall be the duty of the district attorney of each and every county in the state to attend to the prosecution of all persons within his district against whom the state dairy bureau shall enter complaint for violating the provisions of said section of the Penal Code. Said state dairy bureau shall from time to time inspect and examine as to their accuracy, or their adaptability to give accurate results, all glassware, measures, scales, weights and other apparatus

used in creameries, and factories of dairy products where milk and cream are purchased, to determine the amount or percentage of fat in milk or cream. Said state dairy bureau shall supply at cost, and not oftener than once a year, to every creamery, or other factory of dairy products where milk and cream, or either, are purchased, upon application not more than two tubes or bottles and one pipette of the forms used with the Babcock test, which it shall first examine as to accuracy, and if accurate, or adapted to give accurate results under the usual method of operating the Babcock test, said state dairy bureau shall certify to this by marking durably and permanently upon each and every piece of apparatus supplied the letters "D. B." Said state dairy bureau shall also upon payment at the rate of one dollar for each dozen, test or examine into the accuracy of all test bottles or tubes and pipettes sent to it direct from any creamery, or other factory of dairy products where milk or cream are purchased, and if found accurate, or adapted to give accurate results, the letters "D. B." shall be marked upon each piece of apparatus examined. The state dairy bureau shall pay all money received for making such tests for examinations into the state treasury and the same shall become a part of the appropriation for the use of the state dairy bureau and its disposition shall be at the disposal of the state dairy bureau in enforcing the provisions of this act. En. Stats. 1905, 168.

§ 382. **Adulterating food, drugs, liquors, etc.** Every person who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, or any article useful in compounding them, with the fraudulent intent to offer the same, or cause or permit it to be offered for sale as unadulterated or undiluted; and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, or who, in response to an inquiry for any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, sells or offers for sale, a different article, or an article of a different character or manufacture, without first informing such purchaser of such difference, is guilty of a misdemeanor; provided, that no retail dealer shall be convicted under the provisions of this section if he shall prove a written guaranty of purity obtained from the person from whom he purchased such adulterated or diluted goods. En. February 14, 1872. Am'd. 1903, 351.



Acts relating to deception in sale of butter and cheese: See post, Appendix, title Butter.

Act preventing sale of oleomargarine: See post, Appendix, title Oleomargarine.

Adulteration, acts relating to: See post, Appendix, title Adulteration.

§ 383. **Disposing of adulterated or tainted food, or drink or drug; "drug," "food" defined.** Every person who knowingly sells, or keeps or offers for sale, or otherwise disposes of any article of food, drink, drug, or medicine, knowing that the same is adulterated or has become tainted, decayed, spoiled, or otherwise unwholesome or unfit to be eaten or drunk, with intent to permit the same to be eaten or drunk, is guilty of a misdemeanor, and must be fined not less than twenty-five nor more than one hundred dollars, or imprisoned in the county jail not exceeding one hundred days, or both, and may, in the discretion of the court, be adjudged to pay, in addition, all the necessary expenses, not exceeding fifty dollars, incurred in inspecting and analyzing such articles. The term "drug," as used herein, includes all medicines for internal or external use, antiseptics, disinfectants, and cosmetics. The term "food," as used herein, includes all articles used for food or drink by man, whether simple, mixed, or compound. Any article is deemed to be adulterated within the meaning of this section:

**(a) Drugs deemed to be adulterated.** In case of drugs:

(1) If, when sold under or by name recognized in the United States Pharmacopoeia, it differs materially from the standard of strength, quality, or purity laid down therein; (2) If, when sold under or by a name not recognized in the United States Pharmacopoeia, but which is found in some other pharmacopoeia or other standard work on materia medica, it differs materially from the standard of strength, quality, or purity laid down in such work; (3) If its strength, quality, or purity falls below the professed standard under which it is sold.

**(b) Food deemed to be adulterated.** In the case of food:

(1) If any substance or substances have been mixed with it, so as to lower or depreciate, or injuriously affect its quality, strength, or purity; (2) If any inferior or cheaper substance or substances have been substituted wholly or in part for it; (3) If any valuable or necessary constituent or ingredient has been wholly or in part, abstracted from it; (4)

If it is an imitation of, or is sold under the name of, another article; (5) If it consists wholly, or in part, of a diseased, decomposed, putrid, infected, tainted, or rotten animal or vegetable substance or article, whether manufactured or not; or in the case of milk, if it is the produce of a diseased animal; (6) If it is colored, coated, polished, or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is; (7) If it contains any added substance or ingredient which is poisonous or injurious to health. En. February 14, 1872. Am'd. 1905, 769.

The amendment is a consolidation of the present section 383 with the statute of 1895, page 71. Section 4 of the statute has, however, been omitted as unnecessary.—Code Commissioner's Note.

Cal. Rep. Cit. 126, 367.

Act relating to adulteration: See post, Appendix, title Adulteration.

Acts relating to deception in manufacture and sale of butter and cheese: See post, Appendix, title Butter.

Acts to prevent sale of oleomargarine as butter: See post, Appendix, title Oleomargarine.

Act regulating sale of imitation olive oil: See post, Appendix, title Olive Oil.

**§ 383a. Sale of process or renovated butter.** Any person, firm, or corporation, who sells or offers for sale, or has in his or its possession for sale, any butter manufactured by boiling, melting, deodorizing, or renovating, which is the product of stale, rancid, or decomposed butter, or by any other process whereby stale, rancid, or decomposed butter is manufactured to resemble or appear like creamery or dairy butter, unless the same is plainly stenciled or branded upon each and every package, barrel, firkin, tub, pail, square, or roll, in letters not less than one half inch in length, "process butter," or "renovated butter," in such a manner as to advise the purchaser of the real character of such "process" or "renovated" butter, is guilty of a misdemeanor. Eu. Stats. 1905, 770.

A section of the statute of 1899, page 25, is here codified.—Code Commissioner's Note.

**§ 384. Setting fire to woods, grain, etc.** Every person who willfully or negligently sets on fire, or causes or procures to be set on fire, any woods, prairies, grasses, or grain, on any lands not his own, is guilty of a misdemeanor, and pun-

384. Any person who shall willfully or negligently commit any of the acts hereinafter enumerated in this section shall be guilty of a misdemeanor, and upon conviction thereof be punishable by a fine of not less than twenty-five nor more than five hundred dollars, or imprisonment in the county jail not less than fifteen days nor more than six months, or both such fine and imprisonment, except, that in case of an offense against subsection 5 of this section, the fine imposed may be not less than ten dollars.

1. Setting fire, or causing or procuring fire to be set to any forest, woodland, brush, prairie, grass, grain, stubble or any other material being or growing on lands not his own, without the permission of the owner of such land; **provided**, that it shall be lawful to build, in a careful manner, camp fires on any unenclosed lands, the owner of which has not forbidden such building of camp fires thereon by personal notice or by posting such prohibition in conspicuous places or otherwise; **and provided further**, that before departing from the place where such camp fire has been built, the builder of such fire first totally extinguishes the same.

2. Allowing fires, lawfully set, to escape from the control of the person having charge thereof, or to spread to the lands of any person other than the builder of such fire.

3. Building a fire on his own land for the purpose of burning brush, stumps, logs, rubbish, fallen timber, fallows, grass of any other thing whatsoever, or blasting wood with dynamite, powder or other explosives, or setting off fireworks in forest or brush-covered land, either his own or the property of another during a dry season; **provided**, that any state or district fire warden, may, in his reasonable discretion, give a written permit to any person desiring

to build fires or blast as aforesaid; such permit shall contain such rules and regulations for the building and management of such fires as the state board of forestry may from time to time prescribe; and no person shall be convicted under this sub-section, who shall upon the trial prove, affirmatively, that he has complied with all the rules and regulations so prescribed; **and provided, further,** that any person engaged in logging redwood may carefully use explosives or fire in the manner in which it is now customarily used in such logging.

4. Using any logging locomotive, donkey or threshing engine, or any other engine or boiler, except such as use oil exclusively for fuel, in or near any forest, brush or grass land, unless he shall prove upon the trial, affirmatively, that such engines or boilers used by him were provided with adequate devices to prevent the escape of fire or sparks from smoke stacks, ash pans, fire boxes or other parts, and that he has used every reasonable precaution to prevent the causing of fire thereby.

5. Refusing or failing to comply with the summons of any fire warden authorized to call out persons to aid in extinguishing forest fires, unless prevented by good and sufficient reasons.

No person shall be convicted under this section who shall have set, in good faith and with reasonable care, a back fire for the purpose of stopping the progress of a fire then actually burning.

One-half of all fines paid into any county treasury upon conviction under this section shall be paid by the county treasurer into the state treasury to the credit of the forestry fund. (In effect 60 days from and after March 23, 1907.)

**384a.** Repealed.

**384b.** Repealed.

**384c.** Every person who wilfully or negligently, while  
tending upon the inclosed lands of another, kills, maims, or  
wounds an animal, the property of another, is guilty of a  
demeanor. (In effect 60 days from and after March 18,  
1907.)



ishable by fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both. En. February, 14, 1872. Am'd. 1905, 758.

The amendment designates the punishment, and in this respect conforms the section to the statute of 1871-2, page 96, on the same subject, and inserts, after the word "lands," the words "not his own," to conform the section to what was obviously the intent of the legislature.—Code Commissioner's Note.

Cal. Rep. Cit. 90, 107; 98, 270.

Act to prevent destruction of forests: See post, Appendix, title Fires.

Act to prevent destruction by fire of property of contiguous owners: See post, Appendix, title Fires.

§ 384a. **Keeping fires within certain limits.** Every person who starts a fire in hay, grain, stubble, grass, weeds, or woodland, without first carefully providing by plowing or otherwise, for the keeping of such fire within and upon the premises upon which it is started or set, whereby any property of an adjoining or contiguous resident or owner is injured or destroyed, is guilty of a misdemeanor. En. Stats. 1905, 758.

This is a codification of the statute of 1891, page 473, concerning the subject set forth in the section.—Code Commissioner's Note.

§ 384b. **Camp fire.** Every person who, upon departing from a camp or camping place, willfully or negligently leaves fire burning or unextinguished, is guilty of a misdemeanor. En. Stats. 1905, 758.

This is a codification of that part of section 5 of the statute of 1875-6, page 408, respecting the leaving of camp fires unextinguished.—Code Commissioner's Note.

§ 384c. **Animals injured by persons hunting.** Every person who willfully and negligently, while hunting upon the inclosed lands of another, kills, maims, or wounds an animal, the property of another, is guilty of a misdemeanor. En. Stats. 1905, 673.

This is a codification of sections 4 and 5 of the statute of 1875-6, page 408, respecting the wounding of animals while hunting upon the lands of another.—Code Commissioner's Note.

§ 385. **Obstructing attempts to extinguish fires.** Every person who, at the burning of a building, disobeys the lawful orders of any public officer or fireman, or offers any resistance to or interference with the lawful efforts of any fireman or company of firemen to extinguish the same, or

engages in any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents, or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor. En. February 14, 1872.

Fires and firemen: See Pol. Code, secs. 3335 et seq.

**§ 386. Maintaining bridge or ferry without authority.** Every person who demands or receives compensation for the use of any bridge or ferry, or sets up or keeps any road, bridge, ferry, or constructed ford for the purpose of receiving any remuneration for the use of the same, without authority of law, is guilty of a misdemeanor. En. February 14, 1872.

Public ferries and toll-bridges: Pol. Code, secs. 2843 et seq.

**§ 387. Violating condition of undertaking to keep ferry.** Every person who, having entered into an undertaking to keep and attend a ferry, violates the conditions of such undertaking, is guilty of a misdemeanor. En. February 14, 1872.

Undertaking by ferryman: See Pol. Code, sec. 2850.

**§ 388. Riding or driving faster than a walk on toll-bridges.** Every person who willfully rides or drives faster than a walk on or over any toll-bridge, lawfully licensed, is punishable by fine not exceeding twenty dollars. En. February 14, 1872.

**§ 389. Crossing toll-bridges, etc., without paying toll.** Every person not exempt from paying tolls, who crosses on any ferry or toll-bridge, or passes through any toll-gate, lawfully kept, without paying the toll therefor, and with intent to avoid such payment, is punishable by fine not exceeding twenty dollars. En. February 14, 1872.

**§ 390. Engineer of locomotive engine omitting to ring bell when crossing highway.** Every person in charge of a locomotive engine who, before crossing any traveled public way, omits to cause a bell to ring or steam-whistle to sound at the distance of at least eighty rods from the crossing, and up to it, is guilty of a misdemeanor. En. February 14, 1872.

Penalty of company in such cases: See Civ. Code, sec. 486.



§ 391. **Intoxication of engineers, conductors, or drivers of locomotives or cars.** Every person who is intoxicated while in charge of a locomotive engine, or while acting as conductor or driver upon any railroad train or car, whether propelled by steam or drawn by horses, or while acting as train dispatcher, or as telegraph operator, receiving or transmitting dispatches in relation to the movement of trains, is guilty of a misdemeanor. En. February 14, 1872.

See Pol. Code, secs. 2932, 2933.

§ 392. **Placing passenger cars in front of freight cars.** Every person who, in making up or running railroad trains, places or runs, or causes to be placed or run, any freight car in the rear of passenger cars, is guilty of a misdemeanor, and if loss of life or limb results from such placing or running, is guilty of felony. The term "freight car," as used in this section, does not include a baggage, express, or mail car. En. February 14, 1872.

§ 393. **Violation of duty by employees of railroad companies.** Every engineer, conductor, brakeman, switch-tender, or other officer, agent, or servant of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent or servant, whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor. En. February 14, 1872.

§ 394. **Exposing person infected with any contagious disease in a public place.** Every person who willfully exposes himself or another afflicted with any contagious or infectious disease, in any public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, is guilty of a misdemeanor. En. February 14, 1872.

§ 395. **Frauds practiced to affect the market price.** Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor. En. February 14, 1872.

§ 396. **Racing upon highways.** Every person driving any conveyance drawn by horses, upon any public road, or way, who causes or suffers his horses to run, with intent to

pass another conveyance, or to prevent such other from passing his own, is guilty of a misdemeanor. En. February 14, 1872.

§ 397. **Selling liquor to Indians.** Every person who sells or furnishes or causes to be sold or furnished, intoxicating liquors to any habitual or common drunkard or to any Indian, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1873-4, 462; 1893, 98; 1897, 29; 1903, 93.

Cal. Rep. Cit. 105, 345; 105, 346; 105, 347; 113, 174; 113, 178.

Act relating to sale of liquors to minors: See post, Appendix, title Intoxicating Liquors.

§ 397b. **Liquors, selling of to minors; permitting minor to visit saloons; not to apply to parents.** Every person who sells, gives or delivers to any minor child, male or female, under the age of eighteen years, any intoxicating drink in any quantity whatsoever, or who, as proprietor or manager of any saloon or public house where intoxicating liquors are sold, permits any such minor child under the age of eighteen years, to visit said saloon or public house where intoxicating liquors are sold, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for a period not exceeding one hundred and fifty days, or by both such fine and imprisonment; provided, that this section shall not apply to the parents of such children, or to guardians of their wards. En. Stats. 1905, 673.

This is a codification of the act of the last session (Stats. 1906, p. 319), respecting the sale of intoxicating liquors to children.—Code Commissioner's Note.

§ 398. **Selling firearms and ammunition to Indians.** Every person who sells or furnishes to any Indian any firearm, or ammunition therefor, is guilty of a misdemeanor. En. February 14, 1872.

§ 399. **Death from mischievous animals.** If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large, or while not kept with ordinary care, kills any human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take

in the same situation, is guilty of a felony. En. February 14, 1872.

**§ 400. Exhibiting deformities of person.** Every person exhibiting the deformities of another, or his own deformities, for hire, is guilty of a misdemeanor; and every person who shall, by any artificial means give to any person the appearance of a deformity, and shall exhibit such person for hire, shall be guilty of a misdemeanor. En. Stats. 1873-4, 462.

**§ 400. Aiding or encouraging suicide a felony.** En. 1873-4, 433; amended and re-enacted as § 401; Stats. 1905, 770.

400. 401. There being two sections numbered 400 and 401, the one relating to the encouragement of suicide has been numbered 401.—Code Commissioner's Note.

**§ 401. Aiding in suicide.** Every person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony. As § 400 En. Stats. 1873-4, 433. Renumbered and amended 1905, 770.

See note to § 400, ante.

There were formerly two sections numbered 401, one passed in 1880, and one in 1878. They were renumbered in 1891 as numbers 402¼ and 402½. En. Stats. 1877-8, 116, 1880, 41. Am'd. 1891, 27.

**§ 401a. Cubic feet of space in rooms.** Every person who owns, leases, lets, or hires to any person any room in any building, house, or other structure within the limits of any incorporated city, or city and county, for the purpose of a lodging or sleeping apartment, which room or apartment contains less than five hundred cubic feet of space in the clear for each person occupying such room or apartment, and every person found sleeping or lodging in, or who hires or uses for the purpose of sleeping or lodging in any room or apartment which contains less than five hundred cubic feet of space in the clear for each person so occupying such room or apartment, is guilty of a misdemeanor. En. Stats. 1905, 770.

This is a codification of the statute of 1875-6, page 759, concerning lodging-houses and sleeping apartments.—Code Commissioner's Note.

**§ 402. Using or exposing animal with glanders.** Any person who shall knowingly sell, or offer for sale, or use,

or expose, or who shall cause or procure to be sold or offered for sale, or used, or exposed any horse, mule, or other animal having the disease known as glanders or farcy, or who shall bring, or cause to be brought, or aid in bringing into this state any sheep, hog, horse, or cattle, or any domestic animal, knowing the same to be affected with any contagious or infectious disease, shall be guilty of a misdemeanor. En. as 400 in Stats. 1880, 41. Am'd. 1889, 353; 1891, 26.

This section was originally number four hundred, but was renumbered when the above amendment was adopted.

Act to prevent spread of contagious diseases among animals: See post, Appendix, title Animals.

§ 402¼. **Adulterating candy.** En. 1877-8, 116, as § 401, amended and renumbered as 402¼ by act of 1891, 27. Amended and renumbered as § 402a by amendment 1905, 771. See post, 402a.

This section was originally number four hundred and one, but was renumbered when the amendment of 1891 was adopted.

§ 402½. **Animal having glanders to be killed.** En. 1880, 41, as § 401; amended and renumbered 402½, 1891, 27. Renumbered as § 402b, Stats. 1905, 771. See post, § 402b.

This section was originally number four hundred and one, but was renumbered when the amendment of 1891 was adopted.

§ 402¾. **Unsafe scaffolding, penalty for erecting.** En. Stats. 1903, 216. Amended and renumbered 402c, 1905, 771. See post, § 402c.

§ 402a. **Adulteration of candies.** Every person who adulterates candy by using in its manufacture terra alba or other deleterious substances, or who sells or keeps for sale any candy or candies adulterated with terra alba, or any other deleterious substance, knowing the same to be adulterated, is guilty of a misdemeanor. En. Stats. 1877-8, 116, as section 401. Am'd. 1891, 27; 1905, 771.

402a (402¼). Section 402¼ for purposes of convenience is renumbered 402a.—Code Commissioner's Note.

§ 402b. **Diseased animal to be killed.** Every animal having glanders or farcy shall at once be deprived of life by the

owner or person having charge thereof, upon discovery or knowledge of its condition; and any such owner or person omitting or refusing to comply with the provisions of this section shall be guilty of a misdemeanor. En. Stats. 1880, 41, as section 401. Am'd. 1891, 27; 1905, 771.

This is a codification of the statute of 1893, page 302.—Code Commissioner's Note.

§ 402c. **Unsafe scaffolding, ladders, etc.** Any person or corporation employing or directing another to do or perform any labor in the construction, alteration, repairing, painting or cleaning of any house, building or structure within this state, who knowingly or negligently furnishes or erects or causes to be furnished or erected for the performance of such labor, unsafe or improper scaffolding, slings, hangers, blocks, pulleys, stays, braces, ladders, irons, ropes or other mechanical contrivances, or who hinders or obstructs any officer attempting to inspect the same under the provisions of "An act to amend an act entitled 'An act to establish and support a bureau of labor statistics, approved March 3, 1883,' approved February 20, 1901," or who destroys, defaces or removes any notice posted thereon by such officer or permits the use thereof, after the same has been declared unsafe by such officer, contrary to the provisions of said section twelve of said act, shall be guilty of a misdemeanor. En. Stats. 1903, 216, as section 402¾. Amended and renumbered 1905, 771.

402c (492¾). The change consists in the renumbering of section 402¾ to 402c.—Code Commissioner's Note.

§ 402d. **Animals affected with contagious diseases to be kept within inclosure.** Any person owning or having possession or control of any animal affected by any contagious or infectious disease, who fails to keep the same within an inclosure, or herd the same in some place where it is secure from contact with other animals of like kind not so affected, or who suffers such infected animal to be driven on the public highway or to range where it is likely to come in contact with other animals not so affected, is guilty of a misdemeanor, and punishable by a fine of not more than five hundred dollars for each offense. En. Stats. 1905, 771.

This is a codification of the statute of 1893, page 302.—Code Commissioner's Note.

## TITLE XI.

### OF CRIMES AGAINST THE PUBLIC PEACE.

- § 403. Disturbance of public meetings, other than religious or political.
- § 404. "Riot" defined.
- § 405. Riot, punishment of.
- § 406. "Rout" defined.
- § 407. "Unlawful assembly" defined.
- § 408. Punishment of rout and unlawful assembly.
- § 409. Remaining present at place of riot, etc., after warning to disperse.
- § 410. Magistrates neglecting or refusing to disperse rioters.
- § 411. Consequence of resisting process after a county has been declared in a state of insurrection.
- § 412. Prize fights.
- § 413. Persons present at prize fights.
- § 414. Leaving the state to engage in prize fights.
- § 415. Disturbing the peace in night-time.
- § 416. Refusing to disperse upon lawful command.
- § 417. Exhibiting deadly weapon in rude, etc., manner, or using the same unlawfully.
- § 418. Forcible entry and detainer.
- § 419. Returning to take possession of lands after being removed by legal proceedings.
- § 420. Inciting riot. (Repealed.)
- § 420. Preventing person from entering upon public lands.
- § 421. National Guard, discrimination against members of.

§ 403. Disturbance of public meetings, other than religious or political. Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as is mentioned in sections fifty-nine and three hundred and two, is guilty of a misdemeanor. En. February 14, 1872.

Section 59 refers to meetings of electors.

Section 302 refers to religious meetings.

§ 404. "Riot" defined. Any use of force or violence, disturbing the public peace or any threat to use such force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot. En. February 14, 1872.

Cal. Rep. Cit. 67, 418.

Unlawful assembly: See sec. 407.

§ 405. Riot, punishment of. Every person who participates in any riot is punishable by imprisonment in the county jail not exceeding two years, or by fine not exceeding two thousand dollars, or both. En. February 14, 1872.

§ 406. "Rout" defined. Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act, which would be a riot if actually committed, such assembly is a rout. En. February 14, 1872.

§ 407. "Unlawful assembly" defined. Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly. En. February 14, 1872.

• § 408. Punishment of rout and unlawful assembly. Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor. En. February 14, 1872.

§ 409. Remaining present at place of riot, etc., after warning to disperse. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor. En. February 14, 1872.

§ 410. Magistrates neglecting or refusing to disperse rioters. If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor. En. February 14, 1872.

§ 411. Consequence of resisting process after a county has been declared in a state of insurrection. A person who, after the publication of the proclamation authorized by section seven hundred and thirty-two, resists or aids in resisting the execution of process in any county, declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting any force ordered out by the governor to quell or suppress an insurrection, is punishable by imprisonment in the state prison not less than two years. En. February 14, 1872.

See ante, sec. 148; post, sec. 731.



§ 412. **Prize fights.** Any person who, within this state, engages in, instigates, aids, encourages, or does any act to further a contention or fight, without weapons, between two or more persons, or a fight commonly called a ring or prize fight, either within or without the state, or who engages in a public or private sparring exhibition, with or without gloves, within the state, or who sends or publishes a challenge or acceptance or [of] a challenge for such a contention, exhibition, or fight, or carries or delivers such a challenge or acceptance, or trains or assists any person in training or preparing for such a contention, exhibition or fight, shall be guilty of a felony, and upon conviction shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned in the state prison not less than one year nor more than three years; provided, however, that sparring exhibitions, not to exceed a limited number of rounds with gloves of not less than five ounces each in weight may be held by a domestic incorporated club upon the prepayment by such club of an annual license to be fixed by the board of supervisors of cities and counties, or the city council or other governing bodies of incorporated cities. Said exhibitions must comply with the rules and regulations as the said supervisors, city councils or other governing bodies of cities and towns shall prescribe by ordinance; provided, further, that the boxers prior to each exhibition must be examined by a physician who shall determine whether or not they are in perfect physical condition. En. February 14, 1872. Am'd. 1899, 153; 1903, 409.

Act to prohibit prize fighting: See post, Appendix, title Prize Fighting.

§ 413. **Persons present at prize fights.** Every person willfully present as a spectator at any fight or contention mentioned in the preceding section, is guilty of a misdemeanor. En. February 14, 1872.

§ 414. **Leaving the state to engage in prize fights.** Every person who leaves this state with intent to evade any of the provisions of the last two sections, and to commit any act out of this state such as is prohibited by them, and who does any act which would be punishable under these provisions if committed within this state, is punishable in the same manner as he would have been in case



such act had been committed within this state. En. February 14, 1872.

§ 415. **Disturbing the peace in night-time.** Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood or person, by loud or unusual noise, or by tumultuous or offensive conduct, or threatening, traducing, quarreling, challenging to fight or fighting, or who on the public streets of any unincorporated town, or upon the public highways in such unincorporated town, run any horse-race, either for a wager or for amusement, or fire any gun or pistol in such unincorporated town, or uses any vulgar, profane or indecent language within the presence or hearing of women or children, in a loud and boisterous manner, is guilty of a misdemeanor, and upon conviction by any court of competent jurisdiction shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both fine and imprisonment, or either, at the discretion of the court. En. February 14, 1872. Am'd. 1877-8, 117.

Cal. Rep. Cit. 62, 509; 62, 510.

“Maliciously” and “willfully”: See ante, sec. 7, subds. 1 and 4.

Jurisdiction of police court: See Pol. Code, sec. 4426.

§ 416. **Refusing to disperse upon lawful command.** If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor. En. February 14, 1872.

§ 417. **Exhibiting deadly weapon in rude, etc., manner, or using the same unlawfully.** Every person who, not in necessary self-defense, in the presence of two or more persons, draws or exhibits any deadly weapon in a rude, angry, and threatening manner, or who, in any manner, unlawfully uses the same, in any fight or quarrel, is guilty of a misdemeanor. En. February 14, 1872.

§ 418. **Forcible entry and detainer.** Every person using or procuring, encouraging or assisting another to use, any force or violence in entering upon or detaining any lands

or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 60, 574.

Forceful entry and detainer: See post, secs. 1159 et seq.

§ 419. **Returning to take possession of lands after being removed by legal proceedings.** Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal, or officer, and who afterwards unlawfully returns to settle, reside upon, or take possession of such lands, is guilty of a misdemeanor. En. February 14, 1872.

§ 420. **Inciting riot. (Repealed.)** En. Stats. 1877-8, 117. Rep. Stats. 1880, 1.

§ 420. **Preventing person from entering upon public lands.** Every person who unlawfully prevents, hinders, or obstructs any person from peaceably entering upon or establishing a settlement or residence on any tract of public land of the United States within the State of California, subject to settlement or entry under any of the public land laws of the United States; or who unlawfully hinders, prevents, or obstructs free passage over or through the public lands of the United States within the State of California, for the purpose of entry, settlement, or residence, as aforesaid, is guilty of a misdemeanor. En. Stats. 1877-8, 117. Rep. Stats. 1880, 1. En. Stats. 1905, 675.

This is a codification of the statute of 1887, page 147.—Code Commissioner's Note.

§ 421. **National Guard, discrimination against members of.** No association or corporation shall by any constitution, rule, by-law, resolution, vote or regulation, discriminate against any member of the National Guard of California because of his membership therein. Any person who willfully aids in enforcing any such constitution, rule, by-law, resolution, vote or regulation against any member of said National Guard of California, is guilty of a misdemeanor. En. Stats. 1905, 190.

## TITLE XII.

OF CRIMES AGAINST THE REVENUE AND PROPERTY  
OF THIS STATE.

- 424. Embezzlement and falsification of accounts by public officers.
- 425. Officers neglecting to pay over public moneys.
- 426. "Public moneys," as used in the preceding section, defined.
- 427. Failure to pay over fines and forfeitures received, a misdemeanor.
- 428. Obstructing officer in collecting revenue.
- 429. Refusing to give assessor list of property, or giving false name.
- 430. Making false statements, not under oath, in reference to taxes.
- 431. Delivering receipts for poll-taxes, other than prescribed by law, or collecting poll-taxes, etc., without giving the receipt prescribed by law.
- 432. Having blank receipts for licenses, etc., other than those prescribed by law.
- 433. (Repealed.)
- 434. Refusing to give name of persons in employment, etc.
- 435. Carrying on business without license.
- 436. Unlawfully acting as auctioneer.
- 437. (Repealed.)
- 438. (Repealed.)
- 439. Effecting insurance on account of foreign companies that have not complied with the laws of this state.
- 440. Officer charged with collection, etc., of revenue, refusing to permit inspection of his books.
- 441. Board of examiners, controller, and treasurer, neglecting certain duties.
- 442. Unlawful conversion of military property.
- 443. Selling state arms, etc. (Repealed.)

§ 424. Embezzlement and falsification of accounts by public officers. Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:

1. Without authority of law, appropriates the same, or any portion thereof, to his own use, or to the use of another; or,

2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law; or,

3. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

4. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,

5. Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft,

order, or warrant drawn upon such moneys by competent authority; or,

6. Willfully omits to transfer the same, when such transfer is required by law; or,

7. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same any money received by him under any duty imposed by law so to pay over the same;—

Is punishable by imprisonment in the state prison for not less than one nor more than ten years, and is disqualified from holding any office in this state. En. February 14, 1872. Am'd. 1880, 30; 1905, 53.

Cal. Rep. Cit. 54, 63; 70, 524; 87, 609; 91, 511; 100, 23; 103, 489; 113, 211; 117, 244; 124, 454; 124, 455; 124, 456; 136, 445. Subd. 2—117, 243. Subd. 3—117, 243. Subd. 4—117, 243. Subd. 10—70, 526; 120, 5.

§ 425. **Officers neglecting to pay over public moneys.** Every officer charged with the receipt, safe-keeping, or disbursement of public moneys, who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of felony. En. February 14, 1872.

Cal. Rep. Cit. 52, 200; 91, 511.

Fines to be paid over: Secs. 1457, 1570.

§ 426. **“Public moneys,”** as used in the preceding section, defined. The phrase “public moneys,” as used in the two preceding sections, includes all bonds and evidence of indebtedness, and all moneys belonging to the state, or any city, county, town, or district therein, and all moneys, bonds, and evidences of indebtedness received or held by state, county, district, city or town officers in their official capacity. En. February 14, 1872.

Cal. Rep. Cit. 117, 244.

§ 427. **Failure to pay over fines and forfeitures received, a misdemeanor.** If any clerk, justice of the peace, sheriff, or constable, who receives any fine or forfeiture, refuses or neglects to pay over the same according to law, and within thirty days after the receipt thereof, he is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 65, 478.

Fines to be paid over: See post, secs. 1457, 1570.

§ 428. **Obstructing officer in collecting revenue.** Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which the people of this state are interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 91, 510; 91, 511.

§ 429. **Refusing to give assessor list of property, or giving false name.** Every person who unlawfully refuses, upon demand, to give to any county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name or fraudulently refuses to give his true name to any assessor, when demanded by such assessor in the discharge of his official duties, is guilty of a misdemeanor. En. February 14, 1872.

Statement of property owned: See Pol. Code, secs. 3629, 3631.

§ 430. **Making false statements, not under oath, in reference to taxes.** Every person who, in making any statement, not upon oath, oral or written, which is required or authorized by law to be made, as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states anything which he knows to be false, is guilty of a misdemeanor. En. February 14, 1872.

Statement of value: See Pol. Code, secs. 3629-3631; reduction of valuation, secs. 3674, 3675.

§ 431. **Delivering receipts for poll-taxes, other than prescribed by law, or collecting poll-taxes, etc., without giving the receipt prescribed by law.** Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment of any poll-tax, road-tax, or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, or who inserts the name of more than one person therein, is guilty of a misdemeanor. En. February 14, 1872.

See Pol. Code, Licenses, secs. 3356-3385.

§ 432. **Having blank receipts for licenses, etc., other than those prescribed by law.** Every person who has in his possession, with intent to circulate or sell, any blank

licenses or poll-tax receipts other than those furnished by the controller of state or county auditor, is guilty of felony. En. February 14, 1872.

See Pol. Code, secs. 3839-3845.

§ 433. (Repealed.) En. February 14, 1872. Rep. April 1, 1872. [The repealing act is on file in the secretary of state's office, but is not printed in the statutes. See Deering's Penal Code under this section.]

§ 434. **Refusing to give name of persons in employment, etc.** Every person who, when requested by the collector of taxes or licenses, refuses to give to such collector the name and residence of each man in his employment, or to give such collector access to the building or place where such men are employed, is guilty of a misdemeanor. En. February 14, 1872.

See Pol. Code, secs. 3848-3850.

§ 435. **Carrying on business without license.** Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law of this state, without taking out or procuring the license prescribed by such law, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 69, 608; 69, 611; 71, 468; 85, 210; 106, 404; 106, 405; 106, 406; 106, 408; 114, 282.

License law: See Pol. Code, Licenses, secs. 3356-3386.

§ 436. **Unlawfully acting as auctioneer.** Every person who acts as an auctioneer in violation of the laws of this state relating to auctions and auctioneers, is guilty of a misdemeanor. En. February 14, 1872.

Auctioneers: See Pol. Code, secs. 3284-3292, 3376.

§§ 437, 438. (Repealed.) En. February 14, 1872. Rep. April 1, 1872. [The repealing act is on file in the secretary of state's office, but is not printed in the statutes. See Deering's Penal Code under this section.]

§ 439. **Effecting insurance on account of foreign companies that have not complied with the laws of this state.** Every person who in this state procures, or agrees to

442½ (new). Every person, other than an officer or enlisted man of the National Guard or Naval Militia of the State of California, or of any other state, or of the United States Army, Navy, Marine Corps or Revenue Service or Forest Service, or inmate of any veterans' or soldiers' home, who at any time wears the uniform of the United States Army or Navy or National Guard, or any part of such uniform, or a uniform or part of a uniform similar thereto, within the bounds of the State of California, is guilty of a misdemeanor, and if found guilty of such offense shall be punishable by a fine of not less than one hundred nor more than two hundred and fifty dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment; **provided**, that nothing in this act shall be construed as prohibiting persons of the theatrical profession from wearing such uniform in any playhouse or theatre while actually engaged in following said profession, **and provided**, that nothing in this act shall be construed as prohibiting the uniform rank of civic societies parading or traveling in a body or assembling in a lodge room; **and provided further**, that whenever the National Guard, or any part thereof is in active service, or is called into active service, no civic organization or member thereof shall parade or appear in uniform in the locality where said National Guard is in service. (In effect March 21, 1907.)





procure, any insurance for a resident of this state, from any insurance company not incorporated under the laws of this state, unless such company or its agent has filed the bond required by the laws of this state relating to insurance, is guilty of a misdemeanor. En. February 14, 1872.

Bonds from foreign corporations: Pol. Code, sec. 623.

§ 440. **Officer charged with collection, etc., of revenue, refusing to permit inspection of his books.** Every officer charged with the collection, receipt, or disbursement of any portion of the revenue of this state, who, upon demand, fails or refuses to permit the controller or attorney-general to inspect his books, papers, receipts, and records pertaining to his office, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 43, 167.

§ 441. **Board of examiners, controller, and treasurer neglecting certain duties.** Every member of the board of examiners, and every controller or state treasurer, who violates any of the provisions of the laws of this state relating to the board of examiners, or prescribing its powers and duties, is guilty of a felony. En. February 14, 1872.

Board of examiners: Pol. Code, secs. 654 et seq.

§ 442. **Unlawful conversion of military property.** Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the National Guard, or in any manner pawn or pledge any arms, uniforms, equipments, or other military property of the State of California, or of any company of the National Guard shall be guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 144.

See Pol. Code, secs. 1963-1968.

§ 443. **Selling state arms, etc.** En. February 14, 1872. Rep. 1905, 145.

## TITLE XIII.

## OF CRIMES AGAINST PROPERTY.

Chapter I. Arson, §§ 447-455.

II. Burglary and Housebreaking, §§ 459-463.

III. Having Possession of Burglarious Instruments and Deadly Weapons, §§ 466, 467.

IV. Forgery and Counterfeiting, §§ 470-482.

V. Larceny, §§ 484-502½.

VI. Embezzlement, §§ 503-514.

VII. Extortion, §§ 518-526.

VIII. False Personation and Cheats, §§ 528-538½.

IX. Fraudulently Fitting Out and Destroying Vessels, §§ 539-543½.

X. Fraudulently Keeping Possession of Wrecked Property, §§ 544, 545.

XI. Fraudulent Destruction of Property Insured, §§ 548, 549.

XII. False Weights and Measures, §§ 552-555.

XIII. Fraudulent Insolvencies by Corporations, and Other Frauds in their Management, §§ 557-572.

XIV. Fraudulent Issue of Documents of Title to Merchandise, §§ 577-583.

XV. Malicious Injuries to Railroad Bridges, Highways, Bridges, and Telegraphs, §§ 587-593a.

## CHAPTER I.

## ARSON.

§ 447. Arson defined.

§ 448. "Building" defined.

§ 449. "Inhabited building" defined.

§ 450. "Night-time" defined.

§ 451. "Burning" defined.

§ 452. Ownership of the building.

§ 453. Degrees of arson.

§ 454. Arson of the first degree. Arson of the second degree.

§ 455. Punishment of arson.

§ 447. Arson defined. Arson is the willful and malicious burning of a building with intent to destroy it. En. February 14, 1872.

Cal. Rep. Cit. 51, 320; 71, 49; 81, 617; 81, 618; 103, 445; 113, 406; 127, 340.

Burning insured property: Post, sec. 548.

§ 448. **“Building” defined.** Any house, edifice, structure, vessel, or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted is a “building” within the meaning of this chapter. En. February 14, 1872.

Cal. Rep. Cit. 71, 49; 81, 617; 103, 445.

§ 449. **“Inhabited building” defined.** Any building which has usually been occupied by any person lodging therein at night is an “inhabited building,” within the meaning of this chapter. En. February 14, 1872.

Cal. Rep. Cit. 71, 49; 81, 617.

§ 450. **“Night-time” defined.** The phrase “night-time,” as used in this chapter, means the period between sunset and sunrise. En. February 14, 1872.

See sec. 463.

§ 451. **“Burning” defined.** To constitute a burning, within the meaning of this chapter, it is not necessary that the building set on fire should have been destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building. En. February 14, 1872.

Cal. Rep. Cit. 103, 445.

§ 452. **Ownership of the building.** To constitute arson it is not necessary that a person other than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in possession of, or was actually occupying such building, or any part thereof. En. February 14, 1872.

Cal. Rep. Cit. 71, 49; 81, 617; 113, 406; 120, 686; 135, 166.

§ 453. **Degrees of arson.** Arson is divided into two degrees. En. February 14, 1872.

Cal. Rep. Cit. 53, 627.

§ 454. **Arson of the first degree. Arson of the second degree.** Maliciously burning in the night-time an inhab-

ited building in which there is at the time some human being, is arson in the first degree. All other kinds of arson are of the second degree. En. February 14, 1872.

Cal. Rep. Cit. 51, 320; 53, 627.

An act of April 1, 1872, Stats. 1871-2, 895, defining arson in the second degree, was superseded by the above section.

Setting on fire of woods, prairies, grasses, or grain, on any lands: See ante, sec. 384.

§ 455. **Punishment of arson.** Arson is punishable by imprisonment in the state prison as follows:

1. Arson in the first degree, for not less than two years;
2. Arson in the second degree, for not less than one nor more than twenty-five years. En. February 14, 1872. Am'd. 1901, 664.

## CHAPTER II.

### BURGLARY AND HOUSEBREAKING.

§ 459. "Burglary" defined.

§ 460. Punishment of burglary.

§ 461. "Housebreaking" defined.

§ 462. Punishment of housebreaking. (Repeated.)

§ 463. "Night-time" defined.

§ 459. **"Burglary" defined.** Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, or railroad car, with intent to commit grand or petit larceny, or any felony, is guilty of burglary. En. February 14, 1872. Am'd. 1875-6, 111.

Cal. Rep. Cit. 52, 454; 55, 525; 56, 407; 58, 106; 59, 383; 61, 366; 65, 226; 67, 104; 86, 240; 93, 113; 94, 482; 94, 597; 121, 347; 130, 602; 138, 146; 138, 484; 143, 129.

§ 460. **Punishment of burglary.** Every burglary committed in the night-time is burglary of the first degree, and every burglary committed in the day-time is burglary of the second degree. En. February 14, 1872. Am'd. 1875-6, 112.

Cal. Rep. Cit. 59, 383; 73, 581; 106, 642; 144, 754.

§ 461. **"Housebreaking" defined.** Burglary of the first degree is punishable by imprisonment in the state prison

for not less than one nor more than fifteen years. Burglary of the second degree is punishable by imprisonment in the state prison for not more than five years. En. February 14, 1872. Am'd. 1875-6, 112.

Cal. Rep. Cit. 88, 120; 88, 173; 143, 599.

§ 462. **Punishment of housebreaking.** (Repealed.) En. February 14, 1872. Rep. 1875-6, 112.

Cal. Rep. Cit. 48, 549.

§ 463. **“Night-time” defined.** The phrase “night-time,” as used in this chapter, means the period between sunset and sunrise. En. February 14, 1872.

Cal. Rep. Cit. 144, 754.

See ante, sec. 450.

### CHAPTER III.

#### HAVING POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS.

§ 466. Possession of burglarious instruments.

§ 467. Having possession of deadly weapons.

§ 466. **Possession of burglarious instruments.** Every person having upon him, or in his possession, a picklock, crow, key, bit, or other instrument or tool, with intent feloniously to break or enter into any building, or who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument above named, so that the same will fit or open the lock of a building, without being requested so to do by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing, or having reason to believe, that it is intended to be used in committing a misdemeanor or felony, is guilty of misdemeanor. Any of the structures mentioned in section four hundred and fifty-nine of this code, shall be deemed to be a building within the meaning of this section. En. February 14, 1872. Am'd. 1873-4, 463.

§ 467. **Having possession of deadly weapons.** Every person having upon him any deadly weapon with intent to assault another, is guilty of a misdemeanor. En. February 14, 1872.

## CHAPTER IV.

## FORGERY AND COUNTERFEITING.

- § 470. Forgery of wills, conveyances, etc.
- § 471. Making false entries in records or returns.
- § 472. Forgery of public and corporate seals.
- § 473. Punishment of forgery.
- § 474. Forging telegraph or telephone messages.
- § 475. Passing or receiving forged notes.
- § 476. Making, passing, or uttering fictitious bills, etc.
- § 477. Counterfeiting coin, bullion, etc.
- § 478. Punishment of counterfeiting.
- § 479. Possessing or receiving counterfeit coin, bullion, etc.
- § 480. Making or possessing counterfeit dies or plates.
- § 481. Counterfeiting railroad or steamship ticket, etc.
- § 482. Restoring canceled railroad or steamship tickets.

§ 470. **Forgery of wills, conveyances, etc.** Every person who, with intent to defraud, signs the name of another person, or of a fictitious person, knowing that he has no authority so to do, to, or falsely makes, alters, forges, or counterfeits, any charter, letters-patent, deed, lease, indenture, writing obligatory, will, testament, codicil, bond, covenant, bank bill or note, postnote, check, draft, bill of exchange, contract, promissory note, due-bill for the payment of money or property, receipt for money or property, passage ticket, power of attorney, or any certificate of any share, right, or interest in the stock of any corporation or association, or any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge of any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or any assignment of any bond, writing obligatory, promissory note, or other contract for money or other property; or counterfeits or forges the seal or handwriting of another; or utters, publishes, passes, or attempts to pass, as true and genuine, any

of the above-named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person; or who, with intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery. En. February 14, 1872. Am'd. 1905, 673.

The change consists in the insertion of the words "or of a fictitious person," in the beginning of the section. The purpose of the amendment is to make the forging of the name of a fictitious person, or knowingly signing the name of another, criminal if done with intent to demand.—Code Commissioner's Note.

Cal. Rep. Cit. 65, 279; 66, 262; 70, 63; 77, 465; 84, 569; 90, 587; 90, 589; 91, 473; 92, 592; 96, 174; 100, 665; 103, 564; 103, 565; 105, 38; 108, 442; 111, 280; 113, 280; 114, 353; 117, 30; 118, 292; 119, 167; 122, 495; 123, 410; 127, 100; 130, 452; 133, 125; 133, 126; 133, 127; 135, 301; 137, 451; 137, 452; 137, 453; 137, 454; 139, 68; 143, 119.

Forgery of records: See post, sec. 471.

§ 471. **Making false entries in records or returns.** Every person who, with intent to defraud another, makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return specified in the preceding section, is guilty of forgery. En. February 14, 1872.

Cal. Rep. Cit. 96, 174; 133, 125.

Forgery of records: See ante, sec. 470.

§ 472. **Forgery of public and corporate seals.** Every person who, with intent to defraud another, forges, or counterfeits the seal of this state, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this state, or of any other state, government, or country, or who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery. En. February 14, 1872.

Cal. Rep. Cit. 133, 125; 137, 451.

§ 473. **Punishment of forgery.** Forgery is punishable by imprisonment in the state prison for not less than one nor more than fourteen years. En. February 14, 1872.

Cal. Rep. Cit. 133, 125.

§ 474. **Forging telegraph or telephone messages.** Every person who knowingly and willfully sends by telegraph or telephone to any person a false or forged message, purporting to be from a telegraph or telephone office, or from any other person, or who willfully delivers or causes to be delivered to any person any such message falsely purporting to have been received by telegraph or telephone, or who furnishes, or conspires to furnish, or causes to be furnished to any agent, operator, or employee, to be sent by telegraph or telephone, or to be delivered, any such message, knowing the same to be false or forged, with the intent to deceive, injure, or defraud another, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment. En. February 14, 1872. Am'd. 1905, 674.

The change consists in the insertion of the words "or telephone" after "telegraph."—Code Commissioner's Note.

Cal. Rep. Cit. 143, 119; 143, 128.

§ 475. **Passing or receiving forged notes.** Every person who has in his possession, or receives from another person, any forged promissory note or bank-bill, or bills, for the payment of money or property, with the intention to pass the same, or to permit, cause, or procure the same to be uttered or passed, with the intention to defraud any person, knowing the same to be forged or counterfeited, or has or keeps in his possession any blank or unfinished note or bank-bill made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered or passed, to defraud any person, is punishable by imprisonment in the state prison for not less than one nor more than fourteen years. En. February 14, 1872.



**176a (new).** Every person who, willfully, with intent to fraud, makes or draws, or utters, or delivers to another person any check or draft on a bank, banker or depository for the payment of money, knowing at the time of such making, drawing, uttering or delivery, that he has not sufficient funds in or credit with such bank, banker or depository to meet such check or draft in full upon its presentation, is punishable by imprisonment in the state prison not less than one year nor more than fourteen years. The word "credit" as used herein shall be construed to be an arrangement or understanding with the bank or depository for the payment of such check or draft. (In effect May 1, 1907.)



**§ 476. Making, passing, or uttering fictitious bills, etc.** Every person who makes, passes, utters, or publishes, with intention to defraud any other person, or who, with the like intention, attempts to pass, utter, or publish, or who has in his possession, with like intent to utter, pass, or publish, any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of some bank, corporation, copartnership, or individual, when, in fact, there is no such bank, corporation, copartnership, or individual in existence, knowing the bill, note, check, or instrument in writing to be fictitious, is punishable by imprisonment in the state prison for not less than one nor more than fourteen years. En. February 14, 1872.

Cal. Rep. Cit. 90, 587; 90, 589; 105, 38; 105, 39; 105, 40; 109, 296; 109, 297; 109, 298; 114, 351; 114, 353; 119, 169; 133, 122; 133, 123; 133, 125; 133, 126; 133, 127; 135, 300; 135, 301; 137, 451; 137, 452; 137, 454.

**§ 477. Counterfeiting, coin, bullion, etc.** Every person who counterfeits any of the species of gold or silver coin current in this state, or any kind or species of gold dust, gold or silver bullion, or bars, lumps, pieces, or nuggets, or who sells, passes, or gives in payment such counterfeit coin, dust, bullion, bars, lumps, pieces, or nuggets, or permits, causes or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting. En. February 14, 1872.

**§ 478. Punishment of counterfeiting.** Counterfeiting is punishable by imprisonment in the state prison for not less than one nor more than fourteen years. En. February 14, 1872.

**§ 479. Possessing or receiving counterfeit coin, bullion, etc.** Every person who has in his possession, or receives for any other person, any counterfeit gold or silver coin of the species current in this state, or any counterfeit gold dust, gold or silver bullion or bars, lumps, pieces, or nuggets, with the intention to sell, utter, put off, or pass the same, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeit, is punishable by imprisonment in the state prison not less than one nor more than fourteen years. En. February 14, 1872.

**§ 480. Making or possessing counterfeit dies or plates.**

Every person who makes, or knowingly has in his possession any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting coin current in this state, or in counterfeiting gold dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment in the state prison not less than one nor more than fourteen years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, must be destroyed. En. February 14, 1872.

Cal. Rep. Cit. 80, 235; 80, 286; 80, 287.

**§ 481. Counterfeiting railroad or steamship tickets.**

Every person who counterfeits, forges, or alters any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad or steamship company, or by any lessee or manager thereof, designed to entitle the holder to ride in the cars or vessels of such company, or who utters, publishes, or puts into circulation, any such counterfeit or altered ticket, check, or order, coupon, receipt for fare, or pass, with intent to defraud any such railroad or steamship company, or any lessee thereof, or any other person, is punishable by imprisonment in the state prison, or in the county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine. En. Stats. 1873-4, 433. Am'd. 1905, 675.

The change consists in the insertion of the words "or steamship" after "railroad," and "or vessels" after "cars."—Code Commissioner's Note.

**§ 482. Restoring canceled railroad or steamship tickets.**

Every person who, for the purpose of restoring to its original appearance and nominal value in whole or in part, removes, conceals, fills up, or obliterates, the cuts, marks, punch-holes, or other evidence of cancellation, from any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad or steamship company, or any lessee or manager thereof, canceled in whole or in part, with intent to dispose of by sale or gift, or to circulate the same, or with intent to defraud the railroad or steamship company, or lessee thereof, or any other person, or who, with like intent to defraud, offers for sale, or in payment of fare on the railroad or vessel of the company, such ticket, check, order, coupon, or pass, knowing the same to have been so restored, in whole or in part, is punishable by imprisonment in

the county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine. En. Stats. 1873-4, 433. Am'd. 1905, 675.

The words "or steamship" are twice inserted after "railroad."—Code Commissioner's Note.

Cal. Rep. Cit. 133, 125.

## CHAPTER V.

### LARCENY.

- 484. "Larceny" defined.
- 485. Larceny of lost property.
- 486. Grand and petit larceny.
- 487. Grand larceny defined.
- 488. Petit larceny.
- 489. Punishment of grand larceny.
- 490. Punishment of petit larceny.
- 491. Dogs property.
- 492. Larceny of written instruments.
- 493. Value of passage tickets.
- 494. Written instruments completed but not delivered.
- 495. Severing and removing part of the realty.
- 496. Receiver of stolen property.
- 497. Larceny, and receiving stolen or embezzled property out of the state.
- 498. Stealing gas.
- 499. Stealing water.
- 499a. Stealing electricity a misdemeanor.
- 499b. Taking motor vehicle, bicycle, etc., temporarily a misdemeanor.
- 500. Larceny of goods saved from fire in San Francisco.
- 501. Purchasing or receiving in pledge junk, etc.
- 502. Applies sections 339, 342, and 343 to junk dealers. (Repealed.)
- 502½. Removal of mortgaged property.

§ 484. "Larceny" defined. Larceny is the felonious stealing, taking, carrying, leading, or driving away the personal property of another. En. February 14, 1872.

Cal. Rep. Cit. 53, 59; 56, 80; 61, 135; 61, 528; 62, 141; 80, 51; 81, 137; 86, 239; 90, 572; 95, 228; 110, 601; 112, 339; 118, 26; 123, 524; 143, 129.

Embezzlement: Sees. 503 et seq.

Aet to more fully define larceny: See post, Appendix, title Larceny.

Aet to punish stealing gold dust, amalgam, or quicksilver: See post, Appendix, title Larceny.

§ 485. Larceny of lost property. One who finds lost property, under circumstances which give him knowledge of or means of inquiry as to the true owner, and who ap-

appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and restore the property to him, is guilty of larceny. En. February 14, 1872.

Cal. Rep. Cit. 81, 137; 95, 230; 95, 231.

Lost and unclaimed property: See Pol. Code, secs. 3136-3157; Civ. Code, secs. 1864-1872.

§ 486. **Grand and petit larceny.** Larceny is divided into two degrees, the first of which is termed grand larceny; the second, petit larceny. En. February 14, 1872.

Cal. Rep. Cit. 66, 185; 67, 351; 86, 240; 91, 27; 112, 339.

§ 487. **Grand larceny defined.** Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of a value exceeding fifty dollars.

2. When the property is taken from the person of another.

3. When the property taken is a bicycle, horse, mare, gelding, cow, steer, bull, calf, mule, jack, or jenny. En. February 14, 1872. Am'd. 1895, 36; 1901, 290.

Cal. Rep. Cit. 49, 68; 56, 80; 59, 392; 61, 478; 65, 17; 66, 185; 67, 352; 80, 51; 100, 439; 112, 339; 114, 110; 116, 584; 120, 667; 140, 662; 144, 252. Subd. 2—139, 636. Subd. 3—62, 52; 62, 142; 90, 572.

Larceny defined: See sec. 484.

Stealing of gold dust, amalgam, quicksilver, etc., is grand larceny: See post, Appendix, title Larceny.

§ 488. **Petit larceny.** Larceny in other cases is petit larceny. En. February 14, 1872.

Cal. Rep. Cit. 64, 404; 67, 352; 86, 240; 112, 339; 116, 584.

Jurisdiction of police court: See Pol. Code, sec. 4426.

§ 489. **Punishment of grand larceny.** Grand larceny is punishable by imprisonment in the state prison for not less than one nor more than ten years. En. February 14, 1872.

Cal. Rep. Cit. 61, 135; 64, 252; 65, 299; 65, 300; 140, 662.

§ 490. **Punishment of petit larceny.** Petit larceny is punishable by fine not exceeding five hundred dollars, or

7. Grand larceny is larceny committed in either of following cases:

When the property taken is of a value exceeding fifty

When the property is taken from the person of another.

When the property taken is a horse, mare, gelding, deer, bull, calf, mule, jack or jenny. (In effect March .)





by imprisonment in the county jail not exceeding six months, or both. En. February 14, 1872.

Cal. Rep. Cit. 64, 341; 66, 186; 73, 444; 109, 266.

§ 491. **Dogs property.** Dogs are personal property, and their value is to be ascertained in the same manner as the value of other property. En. February 14, 1872. Am'd. 1887, 131.

Cal. Rep. Cit. 80, 549.

Malicious injury to animal: Post, sec. 597.

§ 492. **Larceny of written instruments.** If the thing stolen consists of any evidence of debt, or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen. En. February 14, 1872.

Cal. Rep. Cit. 90, 573.

§ 493. **Value of passage tickets.** If the thing stolen is any ticket or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or vessel or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance is the value of such ticket, paper, or writing. En. February 14, 1872. .

§ 494. **Written instruments completed but not delivered.** All the provisions of this chapter apply where the property taken is an instrument for the payment of money, evidence of debt, public security, or passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner. En. February 14, 1872.

Embezzlement of evidence of debt: Post, sec. 510.

§ 495. **Severing and removing part of the realty.** The provisions of this chapter apply where the thing taken is

any fixture or part of the realty, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at some previous time. En. February 14, 1872.

Although outstanding crops are part of the realty, they are subjects of larceny: See post, Appendix, title Larceny.

Act to punish stealing from mining claim, etc.: See post, Appendix, title Larceny.

Severing personalty from realty: See post, Appendix, title Larceny.

§ 496. **Receiver of stolen property.** Every person who, for his own gain, or to prevent the owner from again possessing his property, buys or receives any personal property, knowing the same to have been stolen, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding six months; and it shall be presumptive evidence that such property was stolen, if the same consists of jewelry, silver, or plated ware, or articles of personal ornament, if purchased or received from a person under the age of eighteen years, unless such property is sold by such minor at a fixed place of business carried on by such minor or his employer. En. February 14, 1872. Am'd. 1873-4, 464; 1905, 718.

The change consists in the omission of the words "or both" after "months." Obviously it was not the intention of the legislature that the same offense should be punishable by imprisonment in both the state prison and the county jail.—Code Commissioner's Note.

Cal. Rep. Cit. 89, 495; 89, 499; 90, 573; 94, 574; 135, 62; 135, 63.

§ 497. **Larceny, and receiving stolen or embezzled property out of the state.** Every person who, in another state or country, steals or embezzles the property of another, or receives such property knowing it to have been stolen or embezzled, and brings the same into this state, may be convicted and punished in the same manner as if such larceny, or embezzlement, or receiving, had been committed in this state. En. February 14, 1872. Am'd. 1905, 718.

The object of the amendment is to enlarge the scope of the section to include cases of embezzlement, and to accomplish this purpose the words "or embezzle" have been inserted after "steals," the word "embezzled" has been inserted after "stolen," and the words "or embezzlement" have been inserted after "larceny."—Code Commissioner's Note.

496. Every person who for his own gain, or to prevent the owner from again possessing his property, buys or receives any personal property, knowing the same to have been stolen; or any person who having bought or received stolen personal property, who after having been informed that said property then in his possession is stolen property, and after a demand, in writing, for the delivery of same has been made upon him by the owner of said stolen property, or a peace officer, within three months after he bought or received the same, secretes said property, or gives, sells, conveys or transfers said stolen property to another person not entitled thereto, with intent to prevent the owner from again possessing his property, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding six months, and it shall be presumptive evidence that such property was stolen, if the same was purchased or received from a person under the age of eighteen years, unless such property was sold by such person at a fixed place of business carried on by such minor or his employer. (In effect 60 days from and after March 1, 1907.)



§ 498. **Stealing gas.** Every person who, with intent to injure or defraud, makes or causes to be made any pipe, tube, or other instrument, and connects the same, or causes it to be connected, with any main, service-pipe, or other pipe for conducting or supplying illuminating gas, in such manner as to supply illuminating gas to any burner or orifice, by or at which illuminating gas is consumed, around or without passing through the meter provided for the measuring and registering the quantity consumed, or in any other manner so as to evade payment therefor, and every person who, with like intent, injures or alters any gas meter or obstructs its action, is guilty of a misdemeanor. En. February 14, 1872.

§ 499. **Stealing water.** Every person who, with intent to injure or defraud, connects or causes to be connected, any pipe, tube, or other instrument, with any main, service-pipe, or other pipe, or conduit or flume for conducting water, for the purpose of taking water from such main, service-pipe, conduit or flume, without the knowledge of the owner thereof, and with intent to evade payment therefor, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 66, 215.

§ 499a. **Stealing electricity a misdemeanor.** Every person who, with intent to injure or defraud, shall unlawfully connect, or procure another to connect, with any electric apparatus or any electric wire, operated by any person, persons, or corporation authorized to generate, transmit, and sell electric current, without the knowledge and consent of such person, persons, or corporation operating such apparatus or wires, for the purpose of appropriating electric current for light, power, heat, or other use, and to evade payment therefor, or who shall, with like intent, injure or alter, or who shall procure to be injured or altered, any electric meter or obstruct its working, or who shall procure the same to be maliciously tampered with and injured, shall be deemed guilty of a misdemeanor. En. Stats. 1901, 20.

§ 499b. **Taking motor vehicle, bicycle, etc., temporarily, a misdemeanor.** Any person who shall, without the permission of the owner thereof, take any automobile, bicycle, motorcycle, or other vehicle, for the purpose of temporarily

using or operating the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not exceeding three months, or by both such fine and imprisonment. En. Stats. 1905, 185.

§ 500. **Larceny of goods saved from fire in San Francisco.** Every person who, in the city and county of San Francisco, saves from fire or from a building endangered by fire, any property, and for two days thereafter corruptly neglects to notify the owner or fire marshal thereof, is punishable by imprisonment in the state prison for not less than one nor more than ten years. En. February 14, 1872.

Property rescued from fire: See Pol. Code, sec. 3343.

§ 501. **Purchasing or receiving in pledge junk, etc.** Every person who purchases or receives in pledge or by way of mortgage from any person under the age of sixteen years any junk, metal, mechanical tools, or implements, is guilty of a misdemeanor. En. Stats. 1871-2, 684.

§ 502. **Applies secs. 339, 342, and 343 to junk dealers.** (Repealed.) En. Stats. 1871-2, 684. Rep. 1901, 75.

Cal. Rep. Cit. 55, 306.

§ 502½. **Removal of mortgaged property.** Every person who, after mortgaging any real property, and during the existence of such mortgage, or after such mortgaged property shall have been sold under an order and decree of foreclosure, and with intent to defraud or injure the mortgagee, his representatives, successors, or assigns, or the purchaser of such mortgaged premises at such foreclosure sale, his representatives or assigns, takes, removes, or carries away from such mortgaged premises, or otherwise disposes of, or permits the taking, removing, or carrying away, or otherwise disposing of, any house, barn, windmill, or water-tank, upon or affixed to such premises as an improvement thereon, without the written consent of the mortgagee, his representatives, successors, or assigns, of the purchaser at such foreclosure sale, his representatives or assigns, is guilty of larceny, and shall be punished accordingly. En. Stats. 1895, 78.

See post, sec. 538, in the case of chattel mortgage.

## CHAPTER VI.

## EMBEZZLEMENT.

- § 503. "Embezzlement" defined.
- § 504. When officer, etc., guilty of embezzlement.
- § 505. Carrier, when guilty of embezzlement.
- § 506. When trustee, banker, etc., guilty of embezzlement.
- § 507. When bailee, tenant, or lodger guilty of embezzlement.
- § 508. When clerk, agent, or servant guilty of embezzlement.
- § 509. Distinct act of taking.
- § 510. Evidence of debt undelivered a subject of embezzlement.
- § 511. Claim of title a ground of defense.
- § 512. Intent to restore property.
- § 513. Actual restoration a ground for mitigation of punishment.
- § 514. Punishment.

§ 503. "**Embezzlement**" defined. Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted. En. February 14, 1872.

Cal. Rep. Cit. 61, 135; 69, 237; 77, 563; 82, 586; 91, 269; 91, 272; 100, 468; 108, 545; 120, 694; 124, 453; 133, 280; 133, 329; 136, 443; 142, 218; 143, 594.

See ante, sec. 425.

§ 504. **When officer, etc., guilty of embezzlement.** Every officer of this state, or of any county, city, city and county, or other municipal corporation or subdivision thereof, and every deputy, clerk, or servant of any such officer, and every officer, director, trustee, clerk, servant, or agent of any association, society or corporation, (public or private) who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement. En. February 14, 1872. Am'd. 1880, 8.

Cal. Rep. Cit. 66, 274; 69, 237; 82, 586; 106, 312; 108, 541; 108, 542; 124, 453; 124, 454; 124, 455; 134, 303; 136, 451; 143, 67; 143, 68.

Public moneys: See ante, sec. 424; and post, sec. 514.

§ 505. **Carrier, when guilty of embezzlement.** Every carrier or other person having under his control personal property for the purpose of transportation for hire, who fraudulently appropriates it to any use or purpose, inconsistent with the safe-keeping of such property and its trans-

portation according to his trust, is guilty of embezzlement, whether he has broken the package in which such property is contained, or has otherwise separated the items thereof, or not. En. February 14, 1872.

§ 506. When trustee, banker, etc., guilty of embezzlement. Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise intrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement. En. February 14, 1872.

Cal. Rep. Cit. 69, 237; 116, 390; 136, 443.

§ 507. When bailee, tenant, or lodger guilty of embezzlement. Every person intrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, is guilty of embezzlement. En. February 14, 1872.

Cal. Rep. Cit. 51, 379; 71, 389; 77, 563; 133, 329; 138, 465.

§ 508. When clerk, agent, or servant guilty of embezzlement. Every clerk, agent, or servant of any person who fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of another which has come into his control or care by virtue of his employment as such clerk, agent, or servant, is guilty of embezzlement. En. February 14, 1872.

Cal. Rep. Cit. 66, 345; 69, 237; 71, 391; 77, 182; 77, 563; 100, 486; 143, 594.

Embezzlement: See secs. 507, 508.

§ 509. Distinct act of taking. A distinct act of taking is not necessary to constitute embezzlement. En. February 14, 1872.

Embezzlement and larceny distinguished: See ante, secs. 484, 503.

§ 510. Evidence of debt undelivered a subject of embezzlement. Any evidence of debt, negotiable by delivery



**506.** Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise intrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with fraudulent intent to appropriate it to such use or purpose, and any contractor who appropriates money paid to him for any use or purpose, other than for that which he received it, is guilty of embezzlement. (In effect 60 days from and after March 22, 1907.)



only, and actually executed, is the subject of embezzlement, whether it has been delivered or issued as a valid instrument or not. En. February 14, 1872.

See also, ante, sec. 494.

**§ 511. Claim of title a ground of defense.** Upon any indictment for embezzlement, it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith, even though such claim is untenable. But this provision does not excuse the unlawful retention of the property of another to offset or pay demands held against him. En. February 14, 1872.

Cal. Rep. Cit. 77, 562; 120, 26.

**§ 512. Intent to restore property.** The fact that the accused intended to restore the property embezzled, is no ground of defense or mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, or an indictment found by a grand jury, charging the commission of the offense. En. February 14, 1872. Am'd. 1905, 682.

The change consists in the insertion of the words "or an indictment found by a grand jury," after "magistrate."—Code Commissioner's Note.

Cal. Rep. Cit. 135, 308; 138, 464.

**§ 513. Actual restoration a ground for mitigation of punishment.** Whenever, prior to an information laid before a magistrate, or an indictment found by a grand jury, charging the commission of embezzlement, the person accused voluntarily and actually restores or tenders restoration of the property alleged to have been embezzled, or any part thereof, such fact is not a ground of defense, but it authorizes the court to mitigate punishment, in its discretion. En. February 14, 1872. Am'd. 1905, 682.

The change consists in the insertion of the words "or an indictment found by a grand jury," after "magistrate."—Code Commissioner's Note.

Cal. Rep. Cit. 80, 56.

Compromise by permission of court discharges prisoner, when: Post, sec. 1378.

**§ 514. Punishment.** Every person guilty of embezzlement is punishable in the manner prescribed for feloniously

stealing property of the value of that embezzled; and where the property embezzled is an evidence of debt or right of action, the sum due upon it or secured to be paid by it must be taken as its value; if the embezzlement or defalcation is of the public funds of the United States, or of this state, or of any county or municipality within this state, the offense is a felony, and is punishable by imprisonment in the state prison not less than one nor more than ten years; and the person so convicted is ineligible thereafter to any office of honor, trust, or profit in this state. En. February 14, 1872. Am'd. 1880, 8; 1905, 682.

The amendment substitutes "in" for "under" before the word "this," thus making a person convicted of embezzlement ineligible to any office in this state, whether it be a state office or not.—Code Commissioner's Note.

Cal. Rep. Cit. 61, 135; 91, 273; 94, 575; 116, 386.

Embezzlement of public funds.—“No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any state, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this state, and the legislature shall provide by law for the punishment of embezzlement or defalcation as a felony”: Const. Cal. art. IV, sec. 21.

## CHAPTER VII.

### EXTORTION.

- § 518. "Extortion" defined.
- § 519. What threats may constitute extortion.
- § 520. Punishment of extortion in certain cases.
- § 521. Extortion committed under color of official right.
- § 522. Obtaining signature by means of threats.
- § 523. Sending threatening letters with intent to extort.
- § 524. Attempts to extort by means of verbal threats.
- § 525. Officers of railroad companies making overcharges.
- § 526. Sale of tickets to theater, etc.

§ 518. "Extortion" defined. Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force, or fear, or under color of official right. En. February 14, 1872.

Cal. Rep. Cit. 81, 277; 93, 456; 123, 522; 123, 523; 126, 367; 127, 214.

§ 519. What threats may constitute extortion. Fear, such as will constitute extortion, may be induced by a threat, either:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his, or member of his family; or,

2. To accuse him, or any relative of his, or members of his family of any crime; or,

3. To expose, or impute to him or them any deformity or disgrace; or,

4. To expose any secret affecting him or them. En. February 14, 1872.

Cal. Rep. Cit. 57, 563; 63, 491; 81, 277; 81, 278; 81, 279; 95, 641; 95, 642; 123, 523. Subd. 2—126, 367.

Subd. 1. Injury to property: See sec. 523.

**§ 520. Punishment of extortion in certain cases.** Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force, or any threat, such as is mentioned in the preceding section, is punishable by imprisonment in the state prison not exceeding five years. En. February 14, 1872.

Cal. Rep. Cit. 81, 279.

Robbery: Ante, sec. 211.

**§ 521. Extortion committed under color of official right.** Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed in this code, is guilty of a misdemeanor. En. February 14, 1872.

See ante, sec. 518.

**§ 522. Obtaining signature by means of threats.** Every person who, by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge, or right of action created, is punishable in the same manner as if the actual delivery of such debt, demand, charge, or right of action were obtained. En. February 14, 1872.

**§ 523. Sending threatening letters with intent to extort.** Every person who, with intent to extort any money or

other property from another, sends or delivers to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat such as is specified in section five hundred and nineteen, is punishable in the same manner as if such money or property were actually obtained by means of such threat. En. February 14, 1872.

Cal. Rep. Cit. 81, 278; 95, 641.

Offense, when complete: See post, sec. 660.

§ 524. **Attempts to extort by means of verbal threats.** Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in section five hundred and nineteen, to extort money or other property from another, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 63, 491; 123, 523.

§ 525. **Officers of railroad companies making overcharges.** Every officer, agent, or employee of a railroad company, who asks or receives a greater sum than is allowed by law for the carriage of passengers or freight, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 145, 637.

Rate of charges: See Civ. Code, sec. 489.

§ 526. **Sale of tickets to theater, etc.** Every person who sells or offers for sale any ticket or tickets to any theater or other public place of amusement at a price in excess of that charged originally by the management of such theater or public place of amusement is guilty of a misdemeanor. En. Stats. 1905, 140.

526. Repealed.





## CHAPTER VIII.

## FALSE PERSONATION AND CHEATS.

- § 528. Marrying under false personation.
- 529. Personating another in private or official capacity.
- 530. Receiving money or property in a false character.
- 531. Fraudulent conveyances.
- 532. Obtaining money, property or labor by false pretenses.
- 533. Selling land twice.
- 534. Married person selling lands under false representations.
- 535. Mock auction.
- 536. Consignee, false statement by.
- 537. Defrauding inn or boarding-house.
- 537. Removal of mortgaged chattels. (Repealed.)
- 537½. Fraudulent registration of cattle.
- 537¾. Defrauding owner of livery stable a misdemeanor.
- 537a. Fraudulent registration of cattle.
- 537b. Defrauding owners of livery stables.
- 538. Removing mortgaged personal property; further incumbrance or sale.
- § 538a. Misrepresentation of newspaper circulation.
- § 538b. Wearing badge of secret society unless entitled to.

§ 528. Marrying under false personation. Every person who falsely personates another, and in such assumed character marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of such other, is guilty of a felony. En. February 14, 1872.

Consent obtained by fraud: See Civ. Code, sec. 58.

§ 529. Personating another in private or official capacity. Every person who falsely personates another in either his private or official capacity, and in such assumed character, either:

1. Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety;

2. Verifies, publishes, acknowledges, or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, or used as true; or,

3. Does any other act whereby, if done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any

benefit might accrue to the party personating, or to any other person;

Is punishable by imprisonment in the county jail not exceeding two years, or by fine not exceeding five thousand dollars. En. February 14, 1872. Am'd. 1905, 684.

The change consists in the insertion of the words "in either his private or official capacity," after "another," the amendment being designed with the purpose of changing the construction put upon this section in *People v. Knox*, 119 Cal. 73, where it was held that the section did not apply to a case where a person falsely assumes an official character.—Code Commissioner's Note.

Cal. Rep. Cit. 77, 439. Subd. 1—119, 73. Subd. 2—77, 437. .

**§ 530. Receiving money or property in a false character.** Every person who falsely personates another, in either his private or official capacity, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received. En. February 14, 1872. Am'd. 1905, 684.

With the same object in view as in the amendment to the preceding section, the words "in either his private or official capacity" have been inserted after "another."—Code Commissioner's Note.

Cal. Rep. Cit. 127, 282.

**§ 531. Fraudulent conveyances.** Every person who is a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract or conveyance, had, made, or contrived with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or who, being a party as aforesaid, at any time wittingly and willingly puts in, uses, avows, maintains, justifies, or defends the same, or any of them, as true, and done, had, or made in good faith, or upon good consideration, or aliens, assigns, or sells any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him or them conveyed as aforesaid, or any part thereof, is guilty of a misdemeanor. En. February 14, 1872.

**Fraud.**—Actual fraud is defined by section 1572, and constructive fraud by section 1573, Civ. Code.

**Fraudulent conveyances:** Civ. Code, secs. 3439-3442.

§ 532. **Obtaining money, property, or labor by false pretenses.** Every person who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor, or property, whether real or personal, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets possession of money or property, or obtains the labor or service of another, is punishable in the same manner and to the same extent as for larceny of the money or property so obtained. En. February 14, 1872. Am'd. 1889, 14; 1905, 685.

The amendment is intended to make it criminal to procure the labor or services of another, or to defraud him of real property, by representations known to be false. With respect to real property, this changes the rule announced in *People v. Cummings*, 114 Cal. 437. The change consists in the addition of the words "whether real or personal," after "property."—Code Commissioner's Note.

Cal. Rep. Cit. 66, 11; 70, 117; 70, 118; 70, 529; 70, 531; 70, 532; 77, 174; 82, 273; 82, 275; 84, 38; 84, 472; 84, 474; 100, 354; 102, 562; 114, 438; 119, 597; 123, 267; 127, 282; 133, 329; 135, 269; 135, 270; 138, 528; 140, 662; 145, 737.

§ 533. **Selling land twice.** Every person who, after once selling, bartering, or disposing of any tract of land or town lot or after executing any bond or agreement for the sale of any land or town lot, again willfully and with intent to defraud previous or subsequent purchasers, sells, barter, or disposes of the same tract of land or town lot, or any part thereof, or willfully and with intent to defraud previous or subsequent purchasers, executes any bond or agreement to sell, barter, or dispose of the same land or lot, or any part thereof, to any other person for a valuable consideration, is punishable by imprisonment in the state prison not less than one nor more than ten years. En. February 14, 1872.

Cal. Rep. Cit. 85, 87.

§ 534. **Married persons selling lands under false representations.** Every married person who falsely and fraudulently represents himself or herself as competent to sell

or mortgage any real estate, to the validity of which sale or mortgage the assent or concurrence of his wife or her husband is necessary, and under such representations willfully conveys or mortgages the same, is guilty of felony. En. February 14, 1872.

§ 535. **Mock auction.** Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property, by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in the state prison not exceeding three years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment; and, in addition thereto, forfeits any license he may hold as auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this state. En. February 14, 1872.

Auctioneers: See Pol. Code, secs. 3284 et seq.

§ 536. **Consignee, false statement by.** Every commission merchant, broker, agent, factor, or consignee, who shall willfully and corruptly make, or cause to be made, to the principal or consignor of such commission merchant, agent, broker, factor, or consignee, a false statement concerning the price obtained for, or the quality or quantity of any property consigned or intrusted to such commission merchant, agent, broker, factor, or consignee, for sale, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or by both such fine and imprisonment. En. Stats. 1880, 37.

§ 537. **Defrauding inn or boarding-house.** Any person who obtains any food or accommodation at an hotel, inn, restaurant, boarding-house or lodging-house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an hotel, inn, restaurant, boarding-house, or lodging-house by the use of any false pretense, or who, after obtaining credit or accommodation at an hotel, inn, restaurant, boarding-house, or lodging-house absconds or surreptitiously removes his baggage therefrom without paying for his food or accommo-

dations is guilty of a misdemeanor. En. Stats. 1889, 44. Am'd. 1903, 22.

Cal. Rep. Cit. 119, 488; 121, 329.

§ 537. Removal of mortgaged chattels. En. Stats. 1887, 87, Am'd. 1893, 119. Rep. 1905, 685.

There were formerly two sections of this number. The one repealed was the one enacted in 1887. The other which was enacted in 1889 and amended in 1903 is still in force. See Penal Code, 1903, p. 202.

Code Commissioner Davis in his report on this section, says: There are two sections numbered 537. The one regarding the removal of mortgaged chattels is repealed, the matter contained in it being sufficiently provided for in section 538.—Code Commissioner's Note.

§ 537½. Fraudulent registration of cattle. En. Stats. 1889, 35. Amended and renumbered as 537a, 1905, 685. See post, § 537a.

§ 537¾. Defrauding owner of livery stable a misdemeanor. En. Stats. 1903, 153. Amended and renumbered as 537b, 1905, 685. See post, § 537b.

§ 537a. Fraudulent registration of cattle. Every person who by any false or fraudulent pretense obtains from any club, association, society, or company, organized for the purpose of improving the breed of cattle, horses, sheep, swine, or other domestic animals, a certificate of registration of any animal in the herd register, or any other register of any such club, association, society, or company, or a transfer of any such registration, and any person who, for a valuable consideration, gives a false pedigree of any animal, with intent to mislead, is guilty of a misdemeanor. En. Stats. 1889, 35, as section 537½. Amended and renumbered 1905, 685.

537a (537½). Section 537½ is renumbered 537a, and the word "valuable" is substituted for "legal," before "consideration." Section 2 is omitted because not properly a part of the Penal Code.—Code Commissioner's Note.

§ 537b. Defrauding owners of livery stables. Any person who obtains any livery hire or other accommodation at any livery or feed stable, kept for profit, in this state, without paying therefor, with intent to defraud the proprietor or manager thereof; or who obtains credit at any such livery or feed stable by the use of any false pretense; or who, after obtaining a horse, vehicle, or other property at such livery or feed stable, willfully or maliciously abuses the same by beating, goading, overdriving or other willful

or malicious conduct, or who, after obtaining such horse, vehicle, or other property, shall, with intent to defraud the owner, manager or proprietor of such livery or feed stable, keep the same for a longer period, or take the same to a greater distance than contracted for; or allow a feed bill or other charges to accumulate against such property, without paying therefor; or abandon or leave the same, is guilty of a misdemeanor. En. Stats. 1903, 157, as section 537¾. Renumbered 1905, 685.

537b (537¾). Renumbered, but not amended.—Code Commissioner's Note.

§ 538. Removing mortgaged personal property; further incumbrance or sale. Every person who, after mortgaging any of the property mentioned in section two thousand nine hundred and fifty-five of the Civil Code, excepting locomotives, engines, rolling stock of a railroad, steamboat machinery in actual use, and vessels, during the existence of such mortgage, with intent to defraud the mortgagee, his representatives or assigns, takes, drives, carries away, or otherwise removes or permits the taking, driving, or carrying away, or other removal of the mortgaged property, or any part thereof, from the county where it was situate when mortgaged, without the written consent of the mortgagee, or who sells, transfers, or in any manner further incumbers the said mortgaged property, or any part thereof, or causes the same to be sold, transferred, or further incumbered, is guilty of larceny, and is punishable accordingly; unless at or before the time of making such sale, transfer, or incumbrance, such mortgagor informs the person to whom such sale, transfer, or incumbrance is made, of the existence of the prior mortgage, and also informs the prior mortgagee of the intended sale, transfer, or incumbrance, in writing, by giving the name and place of residence of the party to whom the sale, transfer, or incumbrance is to be made. En. Stats. 1893, 120. Am'd. 1905, 686.

The amendment extends the operation of the section to cases where personal property is taken, removed, or driven from the county in which it is mortgaged with the intention of defrauding the mortgagee. The change consists in the addition of the words "with intent to defraud the mortgagee, his representatives or assigns, takes, drives, carries away, or otherwise removes or permits the taking, driving or carrying away, or other removal of the mortgaged property, or any part thereof, from the county where it was situated when mortgaged, without the written consent of the mortgagee, or who."—Code Commissioner's Note.

There were formerly two sections of this number, one added March 9, 1903, which appears above as amended in 1905. The other, added March 11, 1903, has been amended and renumbered 538a in 1905 and appears below.



**§ 538a. Misrepresentation of newspaper circulation.** Every proprietor or publisher of any newspaper or periodical who shall willfully and knowingly misrepresent the circulation of such newspaper or periodical, for the purpose of securing advertising or other patronage, shall be deemed guilty of a misdemeanor. En. Stats. 1893, 132, as section 538. Renumbered and amended 1905, 686.

538a (538). Section 538 is renumbered 538a.—Code Commissioner's Note

See note to section 538, ante.

**§ 538b. Wearing badge of secret society unless entitled to.** Any person who willfully wears the badge, lapel button, rosette, or other recognized and established insignia of any secret society, order, or organization, or uses the same to obtain aid or assistance within this state, unless entitled to wear or use the same, under the constitution, by-laws, or rules and regulations, or other laws or enactments of such order or society, is guilty of a misdemeanor. En. Stats. 1905, 686.

538b (543½). This section consists of the matter now in section 543½.

The change is made by placing the matter in a section in the proper chapter. By some inadvertence the legislature placed it in the chapter providing for the punishment of persons fraudulently fitting out and destroying vessels.—Code Commissioner's Note.

## CHAPTER IX.

### FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

§ 539. Captain or other officer willfully destroying vessel, etc.

§ 540. Other person willfully destroying vessel, etc.

§ 541. Making false manifest, etc.

§§ 542, 543. No sections.

§ 543½. Wearing the badge of secret order. (Repealed.)

**§ 539. Captain or other officer willfully destroying vessel, etc.** Every captain or other officer or person in command or charge of any vessel, who, within this state, willfully wrecks, sinks, or otherwise injures or destroys such vessel, or any cargo in such vessel, or willfully permits the same to be wrecked, sunk, or otherwise injured or destroyed, with intent to prejudice or defraud any other person, is punishable by imprisonment in the state prison not less than three years. En. February 14, 1872.

**§ 540. Other person willfully destroying vessel, etc.** Every person, other than such as are embraced within the

last section, who is guilty of any act therein specified, is punishable by imprisonment in the state prison for a term not exceeding ten years. En. February 14, 1872.

§ 541. **Making false manifest, etc.** Every person guilty of preparing, making, or subscribing any false or fraudulent manifest, invoice, bill of lading, ship's register, or protest, with intent to defraud another, is punishable by imprisonment in the state prison not exceeding three years. En. February 14, 1872.

§§ 542, 543. [No sections of these numbers.]

§ 543½. **Wearing the badge of secret order.** En. Stats. 1899, 90. Rep. 1905, 685.

See ante, § 538b, note.

## CHAPTER X.

### FRAUDULENTLY KEEPING POSSESSION OF WRECKED PROPERTY.

§ 544. **Detaining wrecked property after salvage paid.**

§ 545. **Unlawful taking of wrecked property.**

§ 544. **Detaining wrecked property after salvage paid.** Every person who keeps any wrecked property, or the proceeds thereof, after the salvage and expenses chargeable thereon have been agreed to or adjusted, and the amount thereof has been paid to him, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or both. En. February 14, 1872.

Wrecks and wrecked property: Pol. Code, secs. 2403-2418.

§ 545. **Unlawful taking of wrecked property.** Every person who takes away any goods from any stranded vessel, or any goods cast by the sea upon the land, or found in any bay or creek, or knowingly has in his possession any goods so taken or found, and does not deliver the same to the sheriff of the county where they were found, or notify him of his readiness to do so within thirty days after the same have been taken by him, or have come into his possession, is guilty of a misdemeanor. En. February 14, 1872.

Wrecks and wrecked property: Pol. Code, secs. 2403-2418.



## CHAPTER XI.

## FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

§ 548. Burning or destroying property insured.

§ 549. Presenting false proofs upon policy of insurance.

§ 548. **Burning or destroying property insured.** Every person who willfully burns, or in any other manner injures or destroys any property which is at the time insured against loss or damage by fire or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of or in possession of such person or of any other, is punishable by imprisonment in the state prison not less than one nor more than ten years. En. February 14, 1872.

Cal. Rep. Cit. 120, 169; 120, 687.

Arson: See ante, sec. 447.

§ 549. **Presenting false proofs upon policy of insurance.** Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance for the payment of any loss, or who prepares, makes, or subscribes any account, certificate of survey, affidavit, or proof of loss, or other book, paper, or writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim, is punishable by imprisonment in the state prison not exceeding three years, or by fine not exceeding one thousand dollars, or by both. En. February 14, 1872.

Notice and proof of loss: See Civ. Code, secs. 2633-2637.

## CHAPTER XII.

## FALSE WEIGHTS AND MEASURES.

§ 552. "False weight" and "measure" defined.

§ 553. Using false weights or measures.

§ 554. Stamping false weight, etc., on casks or packages.

§ 555. Weight by the ton or pound.

§ 552. **"False weight" and "measure" defined.** A false weight or measure is one which does not conform to the

standard established by the laws of the United States of America. En. February 14, 1872.

Weights and measures: See Pol. Code, secs. 3209-3223.

§ 553. **Using false weights or measures.** Every person who uses any weight or measure, knowing it to be false, by which use another is defrauded or otherwise injured, is guilty of a misdemeanor. En. February 14, 1872.

§ 554. **Stamping false weight, etc., on casks or packages.** Every person who knowingly marks or stamps false or short weight or measure, or false tare, on any cask or package, or knowingly sells, or offers for sale, any cask or package so marked, is guilty of a misdemeanor. En. February 14, 1872.

§ 555. **Weight by the ton or pound.** In all sales of coal, hay, and other commodities, usually sold by the ton or fractional parts thereof, the seller must give to the purchaser full weight, at the rate of two thousand pounds to the ton; and in all sales of articles which are sold in commerce by avoirdupois weight, the seller must give to the purchaser full weight, at the rate of sixteen ounces to the pound; and any person violating this section is guilty of a misdemeanor. En. Stats. 1875-6, 112.

## CHAPTER XIII.

### FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER FRAUDS IN THEIR MANAGEMENT.

- § 557. Frauds in subscriptions for stock of corporations.
- § 558. Frauds in procuring organization, etc., of corporation.
- § 559. Unauthorized use of names in prospectus, etc.
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- § 568. Director of a corporation presumed to have knowledge of its affairs.
- § 569. Director present at meeting, when presumed to have assented to proceedings.
- § 570. Director absent from meeting, when presumed to have assented to proceedings.
- § 571. Foreign corporations.
- § 572. "Director" defined.

§ 557. **Frauds in subscriptions for stock of corporations.** Every person who signs the name of a fictitious person

to any subscription for or agreement to take stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor. En. February 14, 1872.

Subscription to articles of incorporation: Civ. Code, sec. 292.

Subscription to capital stock: Civ. Code, sec. 293.

Oath to subscription: Civ. Code, sec. 295.

§ 558. **Frauds in procuring organization, etc., of corporation.** Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the state prison not less than three nor more than ten years. En. February 14, 1872.

False certificate, report, or notice—civil liability of officers: See sec. 316, Civ. Code.

Corporations, organization of: Civ. Code, secs. 283 et seq.

Records: Civ. Code, secs. 377, 378.

Increasing stock: Civ. Code, sec. 359.

§ 559. **Unauthorized use of names in prospectus, etc.** Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement, or announcement of any corporation or joint-stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor. En. February 14, 1872.

See ante, sec. 558.

**§ 560. Misconduct of directors of stock corporations.** Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either—

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

5. To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such other corporation;

—is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 72, 56; 72, 58; 116, 415.

Dividends to be made from surplus profits: Civ. Code, sec. 309.

Officers of bank making illegal loans or investments: See Civ. Code, sec. 581.

Officer of bank advertising or making statement as to capital stock without showing amount paid up: See Civ. Code, sec. 583a.

Persons engaged in banking guilty of misdemeanor unless true name shown: See Civ. Code, sec. 582.

**§ 561. Savings-bank officer overdrawing his account.** Every officer, agent, teller, or clerk of any savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, note, or funds of such bank, is guilty of a misdemeanor. En. February 14, 1872.

**§ 562. Receiving deposits in insolvent banks.** Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual

banker, who receives any deposits, knowing that such bank, or association, or banker is insolvent, is guilty of a misdemeanor. En. February 14, 1872.

§ 563. **Frauds in keeping accounts in books of corporations.** Every director, officer, or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent, or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes, or concurs in making, any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not less than three nor more than ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars, or by both such fine and imprisonment. En. February 14, 1872.

Cal. Rep. Cit. 53, 615; 103, 202.

See ante, sec. 558.

§ 564. **Officer of corporation publishing false reports, etc.** Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, or refuses to make any book or post any notice required by law, in the manner required by law, is guilty of a felony. En. February 14, 1872. Am'd. 1875-6, 112; 1905, 683.

The amendment is intended to incorporate in the section such provisions of the statute of 1877-8, page 695, as are not already sufficiently expressed therein. The statute, however, is limited to corporations whose stock is listed on the stock board or exchange. The amendment omits this limitation, for the reason that its constitutionality is doubtful.—Code Commissioner's Note.

Cal. Rep. Cit. 53, 648.

See Civ. Code, sec. 316; ante, sec. 558.

False reports, act relating to: See post, Appendix, title Corporations.

§ 565. **Officer of corporation to permit an inspection.** Every officer or agent of any corporation, having or keeping an office within this state, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor. En. February 14, 1872.

Records of corporation: See Civ. Code, secs. 377, 378.

§ 566. **Officer of railroad company contracting debt in its behalf exceeding its available means.** Every officer, agent, or stockholder of any railroad company, who knowingly assents to, or has any agency in contracting any debt by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time such debt is contracted, including its bona fide and available stock subscriptions, and exclusive of its real estate, is guilty of a misdemeanor. En. February 14, 1872.

§ 567. **Debt contracted in violation of last section not invalid.** The last section does not affect the validity of a debt created in violation of its provisions, as against the company. En. February 14, 1872.

§ 568. **Director of a corporation presumed to have knowledge of its affairs.** Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its

directors is a violation of this chapter. En. February 14, 1872.

§ 569. **Director present at meeting, when presumed to have assented to proceedings.** Every director of a corporation or joint-stock association, who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors. En. February 14, 1872.

See Civ. Code, secs. 309, 377.

§ 570. **Director absent from meeting, when presumed to have assented to proceedings.** Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors. En. February 14, 1872.

§ 571. **Foreign corporations.** It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation was one created by the laws of another state, government, or country, if it was one carrying on business or keeping an office therefor within this state. En. February 14, 1872.

§ 572. **“Director” defined.** The term “director,” as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law. En. February 14, 1872.



## CHAPTER XIV.

## FRAUDULENT ISSUE OF DOCUMENTS OF TITLE TO MERCHANDISE.

- § 577. Issuing fictitious bills of lading, etc.
- § 578. Issuing fictitious warehouse receipts.
- § 579. Erroneous bills of lading or receipts issued in good faith.
- § 580. Duplicate receipts must be marked "duplicate."
- § 581. Selling, etc., property received for transportation or storage.
- § 582. Bill of lading or receipt issued by warehousemen. (Repealed.)
- § 583. Property demanded by process of law.

§ 577. Issuing fictitious bills of lading, etc. Every person, being the master, owner, or agent of any vessel, or officer or agent of any railroad, express, or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt, or other voucher, by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express, or transportation company, or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner, or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt, or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. En. February 14, 1872.

Bill of lading: See Civ. Code, secs. 2126 et seq.

§ 578. Issuing fictitious warehouse receipts. Every person carrying on the business of a warehouseman, wharfinger, or other depository of property, who issues any receipt, bill of lading, or other voucher for any merchandise of any description, which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. En. February 14, 1872.

Bill of lading: See Civ. Code, secs. 2126 et seq.

§ 579. Erroneous bills of lading or receipts issued in good faith. No person can be convicted of an offense



under the last two sections by reason that the contents of any barrel, box, case, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels, or brands upon the outside of such vessel or package, unless it appears that the accused knew that such marks, labels, or brands, were untrue. En. February 14, 1872.

§ 580. Duplicate receipts must be marked "duplicate." Every person mentioned in this chapter who issues any second or duplicate receipt or voucher, of a kind specified therein, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. En. February 14, 1872.

Duplicate bills: See Civ. Code, sec. 2130.

§ 581. Selling, etc., property received for transportation or storage. Every person mentioned in this chapter, who sells, hypothecates, or pledges any merchandise for which any bill of lading, receipt, or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt, or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. En. February 14, 1872.

§ 582. Bill of lading or receipt issued by warehouseman. (Repealed.) En. February 14, 1872. Rep. 1873-4, 434.

§ 583. Property demanded by process of law. The last two sections do not apply where property is demanded or sold by virtue of process of law. En. February 14, 1872.

## CHAPTER XV.

### MALICIOUS INJURIES TO RAILROAD BRIDGES, HIGHWAYS, BRIDGES, AND TELEGRAPHS.

- § 587. Injuries to railroads and railroad bridges.
- § 588. Injuries to highways, private ways, and bridges.
- § 589. Injuries to toll-houses and gates.
- § 590. Injuries to milestones and guide-boards.
- § 591. Injuring telegraph or telephone lines.
- § 592. Taking water from or obstructing canals.
- § 593. Penalty for interference with electric wires.
- § 593a. Driving nails, etc., in wood intended for manufacture of lumber.

§ 587. Injuries to railroads and railroad bridges. Every person who maliciously, either—

1. Removes, displaces, injures, or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branch-way, switch, turnout, bridge, viaduct, culvert, embankment, station-house, or other structure or fixture, or any part thereof, attached to or connected with any railroad; or,

2. Places any obstruction upon the rails or track of any railroad, or of any switch, branch, branch-way, or turnout connected with any railroad;

—is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not less than six months. En. February 14, 1872.

Cal. Rep. Cit. 75, 571.

§ 588. Injuries to highways, private ways, and bridges. Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such highway or private way, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year. En. February 14, 1872.

Cal. Rep. Cit. 136, 456; 136, 550.

§ 589. Injuries to toll-houses and gates. Every person who maliciously injures or destroys any toll-house or turnpike gate, is guilty of a misdemeanor. En. February 14, 1872.

§ 590. Injuries to milestones and guide-boards. Every person who maliciously removes or injures any mile-board,

**590a (new).** One half of all fines imposed and collected under the provisions of section five hundred and ninety will be paid to the informer who first causes a complaint to be filed charging the defendant with the violation of said section. (In effect 60 days from and after March 22, 1907.)

**590.** Every person who maliciously removes, destroys, injures, breaks or defaces any mile post, board or stone, or guide post erected on or near any highway, or any inscription thereon, is guilty of a misdemeanor. (In effect 60 days from and after March 22, 1907.)



post, or stone, or guide-post, or any inscription on such, erected upon any highway, is guilty of a misdemeanor. En. February 14, 1872.

§ 591. **Injuring telegraph or telephone lines.** Every person who maliciously takes down, removes, injures, or obstructs any line of telegraph or telephone, or any other line used to conduct electricity, or any part thereof, or appurtenances or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 683.

The change consists in the insertion of the words "or telephone, or any other line used to conduct electricity."—Code Commissioner's Note.

Cal. Rep. Cit. 127, 315; 127, 317.

§ 592. **Taking water from or obstructing canals.** Every person who shall without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume, or reservoir, used for the purpose of holding or conveying water for manufacturing, agricultural, mining, irrigating or generation of power or domestic uses, or who shall, without like authority, raise, lower, or otherwise disturb any gate or other apparatus thereof, used for the control or measurement of water, or who shall empty or place, or cause to be emptied or placed, into any such canal, ditch, flume or reservoir, any rubbish, filth, or obstruction to the free flow of the water, is guilty of a misdemeanor. En. 1877-8, 118. Am'd. 1899, 146.

§ 593. **Penalty for interference with electric wires.** Every person who unlawfully and maliciously takes down, removes, injures, interferes with, or obstructs any line erected or maintained by proper authority for the purpose of transmitting electricity for light, heat, or power, or any part thereof, or any insulator or cross-arm, appurtenance or apparatus connected therewith, or severs or in any way interferes with any wire, cable, or current thereof, is punishable by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding one years. En. Stats. 1901, 92.

§ 593a. **Driving nails, etc., in wood intended for manufacture of lumber.** Every person who maliciously drives or

places in any saw-log, shingle-bolt, or other wood, any iron, steel, or other substance sufficiently hard to injure saws, knowing that such saw-log, shingle-bolt, or other wood is intended to be manufactured into any kind of lumber, is guilty of a felony. En. Stats. 1905, 683.

This is a codification of the statute of 1875-6, page 32, relating to the protection of lumber manufacturers.—Code Commissioner's Note.

## TITLE XIV.

### MALICIOUS MISCHIEF.

- § 594. Malicious mischief in general, defined.
- § 595. Specifications in following sections not restrictive of last section.
- § 596. Poisoning cattle.
- § 597. Killing, maiming, or torturing animals.
- § 597a. Unnecessary torture, suffering, or cruelty.
- § 597b. Fighting animals.
- § 597c. Training for fighting, or being present at fight.
- § 597d. Arrests without warrants.
- § 597e. Impounding without food or water.
- § 597f. Permitting animals to go without care.
- § 597g. Keepers of stallions, etc.
- § 598. Killing, etc., birds in cemeteries.
- § 598a. Killing or detaining homing pigeons.
- § 599. Killing gulls or cranes, destroying nests or eggs.
- § 599. Elk, killing of a felony.
- § 599a. Prosecution.
- § 599b. Words defined.
- § 599c. Not to interfere with game laws.
- § 599d. Docking of tails.
- § 599e. Animals to be killed, when unfit for work.
- § 600. Burning structures, etc., not the subject of arson.
- § 601. Using explosives, in destroying or injuring buildings, etc.
- § 602. Malicious injury to freehold.
- § 603. Limitation upon the operations of the preceding section. (Repealed.)
- § 604. Injuries to standing crops, etc.
- § 605. Removing, defacing, or altering landmarks.
- § 606. Destroying or injuring jails.
- § 607. Destroying or injuring bridges, dams, etc.
- § 608. Burning or injuring rafts. Setting adrift vessels.
- § 609. Damages, etc., to buoy and beacon.
- § 610. Masking or removing signals, or exhibiting false lights.
- § 611. Obstructing navigable streams.
- § 612. Depositing sawdust, etc., in Humboldt Bay.
- § 613. Throwing overboard ballast, or obstructing navigation.
- § 614. Mooring vessels to buoys.
- § 615. Injuries to signals, etc., in United States survey.
- § 616. Destroying or tearing down notices, etc.
- § 617. Injuring or destroying written instrument.
- § 618. Opening or publishing sealed letters.
- § 619. Disclosing contents of telegraphic or telephonic message.
- § 620. Altering telegraphic or telephonic messages.
- § 621. Opening telegraphic or telephonic messages.

- § 622. Injuring works of art or improvements.
- § 623. Destroying books, etc., in public libraries.
- § 623½. Detaining books, etc., from public libraries.
- § 624. Breaking or obstructing water-pipes, etc.
- § 625. Drawing water from works after they have been closed.
- § 625a. Unlawful interference with fire-alarm apparatus; penalty.

§ 594. **Malicious mischief in general, defined.** Every person who maliciously injures or destroys any real or personal property not his own, in cases otherwise than such as are specified in this code, is guilty of a misdemeanor. En. February 14, 1872.

Jurisdiction of police court: See Pol. Code, sec. 4426.

§ 595. **Specifications in following sections not restrictive of last section.** The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of the preceding section. En. February 14, 1872.

§ 596. **Poisoning cattle.** Every person who willfully administers any poison to an animal, the property of another, or maliciously exposes any poisonous substance, with the intent that the same shall be taken or swallowed by any such animal, is punishable by imprisonment in the state prison not exceeding three years, or in the county jail not exceeding one year, and a fine not exceeding five hundred dollars. En. February 14, 1872.

Cal. Rep. Cit. 81, 212; 81, 213.

See ante, sec. 594; post, sec. 597.

§ 597. **Killing, maiming, torturing, etc., animals.** Every person who maliciously kills, maims, or wounds an animal, the property of another, or who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink or shelter, or to be cruelly beaten, mutilated or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the same, or in any manner abuses any animal, or fails to provide the same with proper food, drink, shelter or protection from the weather, or who cruelly drives,

rides or otherwise uses the same when unfit for labor, is for every such offense, guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 678.

The amendment consolidates the present section 597 with section 6 of the statute of 1873-4, page 499, as amended 1901, page 285, for the more effectual prevention of cruelty to animals.—Code Commissioner's Note.

Cal. Rep. Cit. 134, 501.

Act to prevent cruelty to animals: See post, Appendix, title Animals.

§ 597a. **Unnecessary torture, suffering or cruelty.** Whoever carries or causes to be carried in or upon any vehicle or otherwise any domestic animal in a cruel or inhuman manner, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering, or cruelty of any kind, is guilty of a misdemeanor; and whenever any such person is taken into custody therefor by any officer, such officer must take charge of such vehicle and its contents, together with the horse or team attached to such vehicle, and deposit the same in some place of custody; and any necessary expense incurred for taking care of and keeping the same, is a lien thereon, to be paid before the same can be lawfully recovered; and if such expense, or any part thereof, remains unpaid, it may be recovered, by the person incurring the same, of the owner of such domestic animal, in an action therefor. En. Stats. 1905, 679.

597a, 597b, 597c, 597d, 597e, 597f. These sections are a codification of sections 7, 8, 9, 11, 12, and 13 of the last-named statute, as amended 1901, page 285.—Code Commissioner's Note.

§ 597b. **Fighting animals.** Any person who causes any bull, bear, cock, dog, or other animal to fight for his amusement or for gain, or to worry or injure each other; and any person who permits the same to be done on any premises under his charge or control; and any person who aids, abets, or is present at such fighting or worrying of such animal, as a spectator, is guilty of a misdemeanor. En. Stats. 1905, 679.

See note to § 597a, ante.

§ 597c. **Training for fighting, or being present at fight.** Whoever owns, possesses, keeps, or trains any bird or animal, with the intent that such bird or animal shall be engaged in an exhibition of fighting, or is present at any place, building, or tenement, where preparations are being made for an exhibition of the fighting of birds or animals,



**597a (new).** It shall be unlawful for any person or persons to dock the tail of any horse, within the State of California, or to procure the same to be done, or to import or bring into this state, any docked horse, or horses, or to drive, work, use, race or deal in any unregistered docked horses, or horses within the State of California except as provided in section five hundred and ninety-seven d of this code. (In effect 60 days from and after March 15, 1907.)

**597b (new).** Within thirty days after the passage of this act, every owner, or user of any docked horse, within the State of California, shall register his or her docked horse, or horses by filing in the office of the county clerk of the county in which such docked horse, or horses, may then be kept, a certificate, which certificate shall contain the name, or names of the owner, together with his or her postoffice address, a full description of the color, age, size and the use made of such docked horse, or horses; which certificate shall be signed by the owner, or his, or her agent. The county clerk shall number such certificate consecutively and record the name in a book, or register to be kept for that purpose only; and shall receive as a fee for recording of such certificate, the sum of fifty cents, and the clerk shall thereupon issue to such person so registering such horse or horses a certificate containing the facts recited in this section which upon demand shall be exhibited to any peace officer, and the same shall be conclusive evidence of a compliance with the provisions of section 597a of this code. (In effect 60 days from and after March 15, 1907.)







**597c (new).** The driving, working, keeping, racing or using of any unregistered docked horse, or horses, after sixty days after the passage of this act, shall be deemed prima facie evidence of the fact that the party driving, working, keeping, racing or using such unregistered, docked horse, or horses, docked the tail of such horse or horses. In effect 60 days from and after March 15, 1907.)

**597d (new).** Any person or persons violating any of the provisions of this act, shall be deemed guilty of a misdemeanor; provided, however, that the provisions of sections 597a, 597b and 597c, shall not be applied to persons owning or possessing any docked pure-bred stallions and mares imported from foreign countries for breeding or exhibition purposes only, as provided by an act of congress entitled "An act regulating the importation of breeding animals" and approved March 3, 1903, and to docked native bred stallions and mares brought into this state and used for breeding or exhibition purposes only; and provided further, that a description of each such animal so brought into the state, together with the date of importation and name and address of importer, be filed with the county clerk of the county where such animal is kept, within thirty days after the importation of such animal. (In effect 60 days from and after March 15, 1907.)

**597b.** Any person who, for amusement or gain, causes a bull, bear, cock, dog, or other animal to fight with like or different kind of animal or creature, or with any human being; or who, for amusement or gain, worries or injures any such bull, bear, cock, dog or other animal, or causes any such bull, bear, cock, dog or other animal to worry or injure each other; and any person who permits the same to be done on any premises under his charge or control; and any person who aids, abets, or is present at such fighting or worrying of such animal or creature, as a spectator, is guilty of a misdemeanor. (In effect 60 days from and after March 21, 1907.)



with the intent to be present at such exhibition, or is present at such exhibition, is guilty of a misdemeanor. En. Stats. 1905, 680.

See note to § 597a, ante.

**§ 597d. Arrests without warrants.** Any sheriff, constable, police, or peace officer, or officer qualified as provided in section six hundred and seven f of the Civil Code, may enter any place, building, or tenement, where there is an exhibition of the fighting of birds or animals, or where preparations are being made for such an exhibition, and, without a warrant, arrest all persons there present. En. Stats. 1905, 680.

See note to § 597a, ante.

**§ 597e. Impounding without food or water.** Any person who impounds, or causes to be impounded in any pound, any domestic animal, must supply the same during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof, is guilty of a misdemeanor. In case any domestic animal is at any time impounded, as aforesaid, and continues to be without necessary food and water for more than twelve consecutive hours, it is lawful for any person, from time to time, as may be deemed necessary, to enter into and upon any pound in which any such domestic animal is confined, and supply it with necessary food and water so long as it remains so confined. Such person is not liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and such animal is not exempt from levy and sale upon execution issued upon a judgment therefor. En. Stats. 1905, 680.

See note to § 597a, ante.

**§ 597f. Permitting animals to go without care.** Every owner, driver, or possessor of any animal, who shall permit the same to be in any building, inclosure, lane, street, square, or lot, of any city, city and county, or township, without proper care and attention, shall, on conviction, be deemed guilty of a misdemeanor. And it shall be the duty of any peace officer, or officer of the humane society, to take possession of the animal so abandoned or neglected and care for the same until it is redeemed by the owner or claimant, and the cost of caring for such animal shall be a lien on the same until the charges are paid. Every sick, disabled, infirm, or crippled animal which shall be aban-

doned in any city, city and county, or township, may, if after due search no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace officers, or an officer of said society, to cause the same to be killed on information of such abandonment. Such officer may likewise take charge of any animal that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated; and, if such animal is not then in the custody of its owner, such officer shall give notice thereof to such owner, if known, and may provide suitable care for such animal until it is deemed to be in a suitable condition to be delivered to such owner, and any necessary expenses which may be incurred for taking care of and keeping the same shall be a lien thereon, to be paid before the same can be lawfully recovered. En. Stats. 1905, 680.

See note to § 597a, ante.

§ 597g. **Keepers of stallions, etc.** Every person who lets to mares or jennies any stallion or jack within the limits of any city, town, or village, or within four hundred yards thereof, except in an inclosure sufficient to obstruct the view of all the inhabitants within such limits, and every person in charge of any stallion, bull, boar, ram, or buck goat who turns out or permits such animal to be turned out or run at large in any county, is guilty of a misdemeanor and punishable by a fine of not less than five or more than twenty dollars, or by imprisonment in the county jail not less than thirty days or by both such fine and imprisonment. En. Stats. 1905, 678.

The statute of 1873-4, page 228, to prevent stallions running at large, and of 1887-8, page 437, respecting buck goats, and of 1871-2, page 63, to provide for the keeping of stallions, are codified in this section, and makes the law concerning the running at large of stallions in Sacramento and Mono counties, by extending its provisions, applicable to the state at large.—Code Commissioner's Note.

§ 598. **Killing, etc., birds in cemeteries.** Every person who, within any public cemetery or burying-ground, kills, wounds, or traps any bird, or destroys any bird's nest other than swallows' nests, or removes any eggs or young birds from any nest, is guilty of a misdemeanor. En. February 14, 1872.

For acts protecting mocking-birds, blue cranes, and also protecting gulls near Santa Monica, see post, Appendix, title Game Laws.

§ 598a. **Killing or detaining homing pigeons.** Every person, other than the owner thereof, who shoots, maims, kills,



**599.** (As approved March 18, 1905) repealed.



or detains any Antwerp, messenger, or homing pigeon is guilty of a misdemeanor and punishable by a fine of not less than ten nor more than twenty-five dollars, or by imprisonment in the county jail not exceeding fifty days. En. Stats. 1905, 687.

This is a codification of the statute of 1897, page 37, for the protection of Antwerp messenger or homing pigeons.—Code Commissioner's Note.

§ 599. **Killing gulls or cranes; destroying nests or eggs.** Every person who willfully and knowingly kills or destroys any of that species of sea bird known as gulls, or who willfully and knowingly shoots, wounds, traps, snares, or in any other manner catches or captures any white or blue crane, or who knowingly takes, injures, or destroys the nest of any white or blue crane, or takes, injures, or destroys the eggs of any such crane in the nest or otherwise, is guilty of a misdemeanor and punishable by a fine of not less than five nor more than one hundred dollars, or by imprisonment of not less than five nor more than one hundred days, or by both such fine and imprisonment. En. February 14, 1872. Rep. 1880, 5. Stats. 1905, 687.

The statute of 1875-6, page 287, to protect sea-gulls in the neighborhood of Santa Monica, and the statute of 1889, page 205, to prevent the destruction of blue cranes, are codified in this section.—Code Commissioner's Note.

At the same session of the legislature there was adopted another § 599 as follows:

§ 599. **Elk, killing of a felony.** Every person who willfully kills any elk within this state is guilty of a felony and punishable by imprisonment in the state prison for a term not exceeding two years. En. February 14, 1872. Rep. 1880, 5. En. Stats. 1905, 218.

§ 599a. **Prosecutions.** When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes that any provision of law relating to, or in any way affecting, dumb animals or birds, is being, or is about to be violated in any particular building or place, such magistrate must issue and deliver immediately a warrant directed to any sheriff, constable, police or peace officer, or officer of any incorporated association qualified as provided by law, authorizing him to enter and search such building or place, and to arrest any person there present violating, or attempting to violate, any law relating to, or in any way affecting, dumb animals or birds, and to bring such person before some court or magistrate

of competent jurisdiction, within the city, city and county, or township within which such offense has been committed or attempted, to be dealt with according to law, and such attempt must be held to be a violation of section five hundred and ninety-seven. En. Stats. 1905, 681.

This section is a codification of section 10 of the statute of 1873-4, page 499, as amended 1901, page 285, for the prevention of cruelty to animals.—Code Commissioner's Note.

§ 599b. Words defined. In this title the word "animal" includes every dumb creature; the words "torment," "torture," and "cruelty" include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted; and the words "owner" and "person" include corporations as well as individuals; and the knowledge and acts of any agent of, or person employed by, a corporation in regard to animals transported, owned, or employed by, or in the custody of, such corporation, must be held to be the act and knowledge of such corporation as well as such agent or employee. En. Stats. 1905, 681.

599b, 599c. Sections 16 and 17 of the statute of 1873-4, page 499, for the more effectual prevention of cruelty to animals, are codified in the above sections.—Code Commissioner's Note.

§ 599c. Not to interfere with game laws. No part of this title shall be construed as interfering with any of the laws of this state known as the "game laws," or any laws for or against the destruction of certain birds, nor must this title be construed as interfering with the right to destroy any venomous reptile, or any animal known as dangerous to life, limb, or property, or to interfere with the right to kill all animals used for food, or with properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state. En. Stats. 1905, 681.

See note to § 599b, ante.

§ 599d. Docking of tails. Whoever shall cut the solid part of the tail of any horse in the operation known as "docking," or in any other operation performed for the purpose of shortening the tail, and whoever shall cause the same to be done, or assist in doing such cutting, is guilty of a misdemeanor. En. Stats. 1905, 681.

599d, 599e. Codifying the statute of 1901, page 287.—Code Commissioner's Note.

**599f (new).** Every person who willfully kills any elk within this state is guilty of a felony and punishable by imprisonment in the state prison for a term not exceeding two years. (In effect 60 days from and after March 19, 1907.)



**§ 599e. Animals to be killed when unfit for work.** Every animal which is unfit, by reason of its physical condition, for the purpose for which such animals are usually employed, and when there is no reasonable probability of such animal ever becoming fit for the purpose for which it is usually employed, shall be by the owner or lawful possessor of the same, deprived of life within twelve hours after being notified by any peace officer, or officer of said society, to kill the same, and such owner, possessor, or person omitting or refusing to comply with the provisions of this section shall, upon conviction, be deemed guilty of a misdemeanor, and after such conviction the court or magistrate having jurisdiction of such offense shall order any peace officer, or officer of said society, to immediately kill such animal; provided, that this shall not apply to such owner keeping any old or diseased animal belonging to him on his own premises with proper care. En. Stats. 1905, 681.

See note to § 599d, ante.

**§ 600. Burning structures, etc., not the subject of arson.** Every person who willfully and maliciously burns any bridge exceeding in value fifty dollars, or any structure, snowshed, vessel, or boat, not the subject of arson, or any tent, or any stack of hay or grain or straw of any kind, or any pile of baled hay or straw, or any pile of potatoes, or beans, or vegetables, or produce, or fruit of any kind, whether sacked, boxed, crated, or not, or any growing or standing grain, grass, or tree, or any fence, or any railroad-car, lumber, cord-wood, railroad ties, telegraph or telephone poles, or shakes, or any tule land or peat ground of the value of twenty-five dollars or over, not the property of such person, is punishable by imprisonment in the state prison for not less than one year, nor more than ten years. En. February 14, 1872. Am'd. 1901, 268; 1905, 711.

The change consists in the insertion of the words "or telephone," before "poles."—Code Commissioner's Note.

**§ 601. Using explosives in destroying or injuring buildings, etc.** Any person who maliciously deposits or explodes, or who attempts to explode, at, in, under, or near any building, vessel, boat, railroad, tramroad, or cable road, or any train, or car, or any depot, stable, car house, theatre, school house, church, dwelling-house, or other place where human beings usually inhabit, assemble, frequent, or pass and re-pass, any dynamite, nitro-glycerine, vigorite, giant or hercules powder, gunpowder, or other chemical compound or

explosive, with the intent to injure or destroy such building, vessel, boat, or other structure, or with the intent to injure, intimidate, or terrify any human being, or by means of which any human being is injured or endangered, is guilty of a felony, and punishable by imprisonment in the state prison not less than one year. En. February 14, 1872. Am'd. 1905, 687.

The present section 601 is amended to conform it to section 8 of the statute of 1887, page 110, to protect life and property against the careless and malicious use or handling of dynamite and other explosives.  
—Code Commissioner's Note.

**§ 602. Malicious injury to freehold.** Every person who willfully commits any trespass by either:

1. Cutting down, destroying, or injuring any kind of wood or timber, standing or growing upon the lands of another;

2. Carrying away any kind of wood or timber lying on such lands;

3. Maliciously injuring or severing from the freehold of another anything attached thereto, or the produce thereof;

4. Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, or stone;

5. Digging, taking, or carrying away from land in any city or town, laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil or stone;

6. Putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention thereto;

7. Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or being on any such lands, whether covered by water or not, without the license of the owner or legal occupant thereof; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any such lands;



8. Willfully opening, tearing down, or otherwise destroying any fence on the inclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property; or

9. Entering any inclosure belonging to, or occupied by, another for the purpose of hunting, shooting, killing, or destroying any kind of game within such inclosure, without having first obtained permission from the owner of such inclosure;

Is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1873-4, 434; 1877-8, 118; 1905, 688.

The change consists in the addition of the eighth and ninth subdivisions. The eighth subdivision is a codification of the statute of 1871-2, page 384, and the ninth is a codification of part of section 3 of the statute of 1875-6, page 408, to prevent hunting upon enclosed lands. —Code Commissioner's Note.

Cal. Rep. Cit. 112, 204.

Act to prevent persons passing through inclosure: See post, Appendix, title Fences and Inclosures.

Acts to prevent leaving open of inclosures: See post, Appendix, title Fences and Inclosures.

Act to prevent hunting on inclosed lands: See post, Appendix, title Fences and Inclosures.

Act to protect Big Tree groves: See post, Appendix, title Growing Trees.

**§ 603. Limitation upon the operations of the preceding section.** En. February 14, 1872. Rep. 1905, 689.

The section as it now stands declares that certain injuries to trees on the lands of the United States, including the cutting of them, do not constitute public offenses. This is a proper subject for regulation by the United States, and it is obviously improper for the state to undertake to legalize trespasses upon, or injuries to, the public lands of the federal government.—Code Commissioner's Note.

**§ 604. Injuries to standing crops, etc.** Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this code, is guilty of a misdemeanor. En. February 14, 1872.

**§ 605. Removing, defacing, or altering landmarks.** Every person who either—

1. Maliciously removes any monument erected for the purpose of designating any point in the boundary of any

lot or tract of land, or a place where a subaqueous telegraph cable lies; or,

2. Maliciously defaces or alters the marks upon any such monument; or,

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks;

—is guilty of a misdemeanor. En. February 14, 1872.

**§ 606. Destroying or injuring jails.** Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any public jail or other place of confinement, is punishable by fine not exceeding ten thousand dollars, and by imprisonment in the state prison not exceeding five years. En. February 14, 1872.

Cal. Rep. Cit. 68, 435; 139, 212; 139, 213.

**§ 607. Destroying or injuring bridges, dams, etc.** Every person who willfully and maliciously cuts, breaks, injures, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed tide or marsh land, or to store or conduct water for mining, manufacturing, reclamation, or agricultural purposes, or for the supply of the inhabitants of any city or town, or any embankment necessary to the same, or either of them, or willfully or maliciously makes, or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same; or draws up, cuts, or injures any piles fixed in the ground for the purpose of securing any sea-bank, or seawalls, or any dock, quay, or jetty, lock, or seawall; or who, between the first day of October and the fifteenth day of April of each year, plows up or loosens the soil in the bed or on the sides of any natural watercourse or channel, without removing such soil within twenty-four hours from such watercourse or channel; or who, between the fifteenth day of April and the first day of October of each year, shall plow up or loosen the soil in the bed or on the sides of such natural watercourse or channel, and shall not remove therefrom the soil so plowed up or loosened before the first day of October next thereafter, is guilty of a misdemeanor, and upon conviction, punishable by a fine not less than one hundred dollars and not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding two years,

**608.** Every person who wilfully and maliciously burns, injures, or destroys any pile or raft of wood, plank, boards, other lumber, or any part thereof, or cuts loose or sets adrift any such raft or part thereof, the property of another, is guilty of a misdemeanor. (In effect 60 days from and after March 22, 1907.)

**608a (new).** Every person who wilfully and maliciously breaks, injures, sinks, or sets adrift any vessel of less than ten gross tons, the property of another, is guilty of a misdemeanor. (In effect 60 days from and after March 22, 1907.)

**608b (new).** Every person who wilfully and maliciously breaks, injures, or sinks any vessel of ten gross tons and upwards, the property of another, is guilty of a misdemeanor. (In effect 60 days from and after March 22, 1907.)

**608c (new).** Every person who wilfully and maliciously breaks or sets adrift any vessel of ten gross tons and upwards, the property of another, is guilty of a felony. (In effect 60 days from and after March 22, 1907.)



or by both; provided, that nothing in this section shall be construed so as to in any manner prohibit any person from digging or removing soil from any such watercourse or channel, for the purpose of mining. En. February 14, 1872. Am'd. 1880, 36.

**§ 608. Burning or injuring rafts. Setting adrift vessels.** Every person who willfully and maliciously burns, injures, or destroys any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or part thereof, or cuts, breaks, injures, sinks, or sets adrift any vessel, the property of another, is punishable by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months. En. February 14, 1872.

Cal. Rep. Cit. 57, 105.

Act to protect lumber manufacturers: See post, Appendix, title Lumber Manufacturers.

**§ 609. Damages, etc., to buoy or beacon.** Any person who willfully removes, damages, or destroys any buoy or beacon placed in any waters within this state by lawful authority, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1905, 689.

The amendment incorporates the provisions of the statute of 1873-4, page 619, for the protection of buoys and beacons.—Code Commissioner's Note.

**§ 610. Masking or removing signals, or exhibiting false lights.** Every person who unlawfully masks, alters, or removes any light or signal, or willfully exhibits any light or signal, with intent to bring any vessel into danger, is punishable by imprisonment in the state prison not less than three nor more than ten years. En. February 14, 1872.

**§ 611. Obstructing navigable streams.** Every person who unlawfully obstructs the navigation of any navigable stream, is guilty of a misdemeanor. En. February 14, 1872.

**§ 612. Depositing sawdust, etc., in Humboldt Bay.** Every person who throws, deposits, or permits another in his employ to throw or deposit, any sawdust, slabs or refuse lumber, in any place where it may be carried or fall into the waters of Humboldt Bay, without first having constructed piers, bulkheads, dams, or other contrivances, ap-

proved by the board of supervisors of Humboldt County, to prevent the same from escaping into the channels of such bay, is guilty of a misdemeanor. En. February 14, 1872.

§ 613. **Throwing overboard ballast, or obstructing navigation.** Every person who, within the anchorage of any port, harbor, or cove of this state, into which vessels may enter for the purpose of receiving or discharging cargo, throws overboard from any vessel the ballast or any part thereof, or who otherwise places or causes to be placed in such port, harbor, or cove, any obstructions to the navigation thereof, is guilty of a misdemeanor. En. February 14, 1872.

§ 614. **Mooring vessels to buoys.** Every person mooring any vessel to or hanging on with a vessel to any buoy or beacon, placed by competent authority in any navigable waters of this state, is guilty of a misdemeanor. En. February 14, 1872.

Act for protection of buoys and beacons: See post, Appendix, title Buoys and Beacons.

§ 615. **Injuries to signals, etc., in United States survey.** Every person who willfully injures, defaces, or removes any signal, monument, building, or appurtenances thereto, placed, erected, or used by persons engaged in the United States coast survey, is guilty of a misdemeanor. En. February 14, 1872.

§ 616. **Destroying or tearing down notices, etc.** Every person who intentionally defaces, obliterates, tears down, or destroys any copy or transcript, or extract from or of any law of the United States or of this state, or any proclamation, advertisement, or notification set up at any place in this state, by authority of any law of the United States or of this state, or by order of any court, before the expiration of the time for which the same was to remain set up, is punishable by fine not less than twenty nor more than one hundred dollars, or by imprisonment in the county jail not more than one month. En. February 14, 1872.

§ 617. **Injuring or destroying written instrument.** Every person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument, the property of another,

the false making of which would be forgery, is punishable by imprisonment in the state prison for not less than one nor more than five years. En. February 14, 1872.

§ 618. **Opening or publishing sealed letters.** Every person who willfully opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letter, knowing the same to have been unlawfully opened, is guilty of a misdemeanor. En. February 14, 1872.

§ 619. **Disclosing contents of telegraphic or telephonic message.** Every person who willfully discloses the contents of a telegraphic or telephonic message, or any part thereof, addressed to another person, without the permission of such person, unless directed so to do by the lawful order of a court, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment. En. February 14, 1872. Am'd. 1880, 38; 1905, 690.

§ 620. **Altering telegraphic or telephonic messages.** Every person who willfully alters the purport, effect, or meaning of a telegraphic or telephonic message to the injury of another, is punishable as provided in the preceding section. En. February 14, 1872.

§ 621. **Opening telegraphic or telephonic messages.** Every person not connected with any telegraph or telephone office who, without the authority or consent of the person to whom the same may be directed, willfully opens any sealed envelope inclosing a telegraphic or telephonic message addressed to any other person, with the purpose of learning the contents of such message, or who fraudulently represents another person and thereby procures to be delivered to himself any telegraphic or telephonic message addressed to such other person, with the intent to use, destroy, or detain the same from the person entitled to receive such message, is punishable as provided in section six hundred and nineteen. En. February 14, 1872.

§ 622. **Injuring works of art or improvements.** Every person, not the owner thereof, who willfully injures, dis-

figures, or destroys any monument, work of art, or useful or ornamental improvement within the limits of any village, town, or city, or any shade tree or ornamental plant growing therein, whether situated upon private ground or any street, sidewalk, or public park or place, is guilty of a misdemeanor. En. February 14, 1872.

§ 623. **Destroying books, etc., in public libraries.** Every person who maliciously cuts, tears, defaces, breaks, or injures any book, map, chart, picture, engraving, statue, coin, model, apparatus, or other work of literature, art, mechanics, or object of curiosity, deposited in any public library, gallery, museum, collection, fair, or exhibition, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1901, 99.

§ 623½. **Detaining books, etc., from public libraries.** Whoever willfully detains any book, newspaper, magazine, pamphlet, manuscript, or other property belonging to any public or incorporated library, reading-room, museum or other educational institution, for thirty days after notice in writing to return the same, given after the expiration of the time which by the rules of such institution such article or other property may be kept, is guilty of a misdemeanor and shall be punished accordingly. En. Stats. 1899, 97.

§ 624. **Breaking or obstructing water-pipes, etc.** Every person who willfully breaks, digs up, obstructs, or injures any pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is guilty of a misdemeanor. En. February 14, 1872.

§ 625. **Drawing water from works after they have been closed.** Every person who, with intent to defraud or injure, opens or causes to be opened, or draws water from any stop-cock or faucet by which the flow of water is controlled, after having been notified that the same has been closed or shut for specific cause, by order of competent authority, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 77, 32.

§ 625a. **Unlawful interference with fire-alarm apparatus; penalty.** Any person who willfully and maliciously tampers with, molests, injures, or breaks any public fire-alarm apparatus, wire, or signal, or willfully and maliciously sends,



gives, transmits, or sounds any false alarm of fire, by means of any public fire-alarm system or signal, is punishable by imprisonment in the county jail, not exceeding one year, or by a fine, not exceeding one thousand dollars, or by both such fine and imprisonment. En. 1903, 137.

## TITLE XV.

### MISCELLANEOUS CRIMES.

Chapter I. Violation of the Laws for the Preservation of Game and Fish, §§ 626-637a.

II. Of Other and Miscellaneous Offenses, §§ 638-654.

### CHAPTER I.

#### VIOLATION OF THE LAWS FOR THE PRESERVATION OF GAME AND FISH.

- § 626. Quail, partridge, wild duck, mall, curlew, ibis, plover, Wilson snipes, mountain quail, grouse, sage hen, closed season.
- § 626a. Doves.
- § 626b. Nests or eggs.
- § 626c. Swan, pheasants, bobwhites, quail, etc.
- § 626d. Limit of bag.
- § 626e. Female deer, spotted fawn, antelope, etc.
- § 626f. Deer.
- § 626g. Tree squirrels.
- § 626h. Sale or possession of deer pelts.
- § 626i. Limit of deer that may be killed in one season.
- § 626j. Running or trailing deer during close season.
- § 626k. Sale of certain game prohibited.
- § 626l. Live animals or birds for scientific purposes or propagation.
- § 626m. Night-time hunting.
- § 627. Trespass upon inclosed or cultivated grounds a misdemeanor.
- § 627a. Unlawful carrying of deer and other game.
- § 627b. Limit as to shipment of certain game.
- § 627c. Transporting out of the state. (Repealed.)
- § 627d. Penalty. (Repealed.)
- § 628. Lobster or crawfish.
- § 628a. Striped bass.
- § 628b. Black bass.
- § 628c. Young fish of any species; fish in pond or reservoir belonging to state; penalty.
- § 628d. Fine or imprisonment; disposition of fines.
- § 629. Screen over millrace, pipe, etc.; penalty; disposition of fines.
- § 630. Use of phosphorus on land in certain counties prohibited. (Repealed.)
- § 631. Net, pound, cage, trap, etc., not to be used.
- § 631a. Penalty for violation.
- § 631b. Disposition of moneys from fines.
- § 631c. Penalty for violation.
- § 632. Trout, steelhead trout; limit of catch; penalty; disposition of fines.
- § 632a. Shipment of trout; penalty; disposition of fines.
- § 632b. Only hook and line to be used in streams where U. S. hatchery is located. (Repealed.)

- § 633. Trout, sale, taking or possession of. (Repealed.)
- § 634. Taking, sale or possession of salmon, when prohibited.
- § 635. Use of explosives, and pollution of waters.
- § 636. Setting net, trap, etc., for fish.
- § 636a. Nets, seines, etc., prohibited.
- § 637. Fish commissioners to examine dams. Fishways.
- § 637a. Killing of birds other than game; meadow lark, etc.; exceptions; certain birds not included.

§ 626. Quail, partridge, wild duck, rail, curlew, ibis, plover, Wilson snipes, mountain quail, grouse, sage hen. Closed season. Every person, who, between the fifteenth day of February and the fifteenth day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, whether taken or killed, in the State of California, or shipped into the state from any other state, territory, or foreign country, any valley quail, or partridge, or any kind of wild duck, or any rail, or any curlew, ibis, plover, or other shore birds (*Limicolae*); or who, between the first day of April and the fifteenth day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, any Wilson snipe; or who, between the fifteenth day of February and the first day of September of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, whether taken or killed in the State of California, or shipped into the state from any other state, territory, or foreign country, any mountain quail, grouse, or sage hen, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1875-6, 113; 1877-8, 119; 1880, 41; 1883, 80; 1887, 236; 1891, 472; 1893, 278; 1895, 256; 1897, 90; 1901, 819; 1903, 2; 1905, 255.

Cal. Rep. Cit. 103, 479; 136, 528.

Acts for the protection of game: See post, Appendix, title Game Laws.

§ 626a. Doves. Every person who, between the fifteenth day of February and the first day of July of the same year, hunts, pursues, takes, kills or destroys, or has in his possession, any dove, is guilty of a misdemeanor. En. 1895, 257. Rep. 1897, 92. En. Stats. 1901, 819. Am'd. 1903, 3.

§ 626b. Nests or eggs. Every person who destroys or has in his possession the nest or eggs of any of the birds mentioned in this chapter, is guilty of a misdemeanor. En. Stats. 1895, 257. Rep. 1897, 92. En. Stats. 1901, 819.

§ 626c. Swan, pheasant, bob-white quail. Every person who takes, kills, or destroys, or has in his possession any swan, or any pheasant, or any bob-white quail, or any variety

**626.** Every person who, between the fifteenth day of February and the first day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession any kind of wild duck; or who between the fifteenth day of February and the fifteenth day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, any valley quall, or partridge, or any rail, or any curlew, ibis, plover, or other shore birds (*Limicolae*); or who, between the first day of April and the fifteenth day of October of any year, hunts, pursues, takes, kills, or destroys, or has in his possession, any Wilson snipe; or who, between the fifteenth day of February and the first day of September of any year, hunts, pursues, takes, kills, destroys, or has in his possession, any mountain quall; or who, at any time prior to the first day of September one thousand nine hundred and nine, hunts, pursues, takes, kills, or destroys, or has in his possession, any grouse or sage hen, is guilty of a misdemeanor. (In effect March 21, 1907.)

**626a.** Every person who, between the fifteenth day of October of any year and the fifteenth day of July of the following year, hunts, pursues, takes, kills or destroys, or has in his possession, any dove, is guilty of a misdemeanor. (In effect March 21, 1907.)

**626d.** Every person who, during any one calendar day, takes, kills, or destroys, or has in his possession, more than twenty-five quall, partridge, doves, snipe, curlew, ibis, plover, rail, or any other shore birds (*Limicolae*), or more than thirty-five wild ducks, is guilty of a misdemeanor. (In effect March 21, 1907.)

**626f.** Every person who, between the first day of October and the fifteenth day of July of the following year, hunts, pursues, takes, kills, or destroys, or has in his possession, whether taken or killed in the State of California, or shipped into the state from any other state, territory, or foreign country, any male deer, or any deer meat, is guilty of a misdemeanor. (In effect March 21, 1907.)



**626g.** Every person who, between the first day of January and the first day of September of the same year, hunts, takes, kills, or destroys, or has in his possession, any species of tree squirrel, or who at any time buys, sells, offers for sale, or has in his possession for sale, any tree squirrel, is guilty of a misdemeanor, and every person who takes, kills, or destroys, or has in his possession, more than twelve tree squirrels during any one open season, is guilty of a misdemeanor. (In effect March 21, 1907.)

**626i.** Every person who takes, kills or destroys or has in his possession, whether taken or killed in the State of California or shipped into the state from any other state, territory, or foreign country, more than two deer during any one open season, is guilty of a misdemeanor. (In effect March 21, 1907.)

**626j.** Every person who, owning, controlling or having in his possession, any dog or dogs, willfully suffers, permits or allows said dog or dogs to run, track or trail any deer at any time, except a wounded deer, during the season that deer may be lawfully killed, is guilty of a misdemeanor. (In effect March 21, 1907.)



of imported quail or partridge, is guilty of a misdemeanor. En. Stats. 1895, 257. Rep. 1897, 92. En. 1901, 819. Am'd. 1905, 256.

§ 626d. **Limit of bag.** Every person who, during any one calendar day, takes, kills, or destroys, or has in his possession, more than twenty-five quail, partridge, doves, snipe, curlew, ibis, plover, rail, or any other shore birds (*Limicolae*), or more than fifty wild ducks, is guilty of a misdemeanor. En. Stats. 1895, 257. Rep. 1897, 92. En. Stats. 1901, 820. Am'd. 1905, 256.

§ 626e. **Female deer, spotted fawn, antelope, etc.** Every person who pursues, takes, kills, or destroys, or has in his possession, any female deer or spotted fawn, or any antelope, elk, or mountain sheep, is guilty of a misdemeanor. En. Stats. 1895, 257. Rep. 1897, 92. En. Stats. 1901, 820.

§ 626f. **Deer.** Every person who, between the fifteenth day of October and the first day of August of the following year, hunts, pursues, takes, kills, or destroys, or has in his possession, whether taken or killed in the State of California, or shipped into the state from any other state, territory, or foreign country, any male deer, or any deer meat, is guilty of a misdemeanor. En. Stats. 1895, 258. Rep. 1897, 92. En. Stats. 1901, 820. Am'd. 1903, 3; 1905, 256.

§ 626g. **Tree squirrel.** Every person who hunts, takes, kills, or destroys, or has in his possession, any species of tree squirrel, is guilty of a misdemeanor. En. Stats. 1895, 258. Rep. 1897, 92. En. Stats. 1901, 820. Am'd. 1905, 256.

§ 626h. **Sale or possession of deer pelts.** Every person who buys, sells, offers or exposes for sale, barter or trade, the hide, pelt or skin of any deer, or who transports, carries, or has in his possession, the skin, pelt or hide of any female deer, or spotted fawn, or any deer hide or pelt from which the evidence of sex has been removed, is guilty of a misdemeanor; provided, however, that the provisions of this section shall not apply to the skin, pelt or hide of any deer killed or taken in a foreign country. En. Stats. 1895, 258. Rep. 1897, 92. En. Stats. 1901, 820. Am'd. 1903, 3.

§ 626i. **Limit of deer that may be killed in one season.** Every person who takes, kills, or destroys, or has in his

possession, whether taken or killed in the State of California, or shipped into the state from any other state, territory, or foreign country, more than two deer, during any one open season, is guilty of a misdemeanor. En. Stats. 1895, 258. Rep. 1897, 92. En. Stats. 1901, 820. Am'd. 1905, 256.

§ 626j. **Running or trailing deer during close season.** Every person who, controlling or having in his possession any deerhounds, foxhounds, greyhounds, or any other kind of dog, willfully suffers, permits, or allows, any of said dogs to run, track, or trail any deer during the time when it is unlawful to kill the same, is guilty of a misdemeanor. En. Stats. 1901, 820.

§ 626k. **Sale of certain game prohibited.** Every person who buys, sells, offers or exposes for sale, barter or trade, any quail, partridge, dove, pheasant, grouse, sage hen, rail, ibis, plover, or any snipe or other shore bird (*Limicolae*), or any deer meat, whether taken or killed in the State of California, or shipped into the state from any other state, territory, or foreign country, is guilty of a misdemeanor. En. Stats. 1901, 820. Am'd. 1905, 256.

§ 626l. **Live animals or birds for scientific purposes of propagation.** Nothing in this act shall be held to prohibit the possession for scientific purposes, or the taking alive for the purpose of propagation, any of the animals or birds mentioned in this section; provided, permission to take and possess said birds or animals for said purposes shall have been first obtained in writing from the game commissioner or the state board of fish commissioners, and said permission shall accompany the shipment of said birds or animals, and shall exempt them from seizure while passing through any part of the state. En. Stats. 1901, 821.

§ 626m. **Night-time hunting.** Every person who, at any time, between one half hour after sundown and one half hour before sunrise of the following day, hunts, pursues, takes, kills, or destroys, any of the birds mentioned in this chapter, is guilty of a misdemeanor. En. Stats. 1901, 821.

§ 627. **Trespass upon inclosed or cultivated grounds a misdemeanor.** Every person who upon any inclosed or cultivated grounds, which is private property, and where signs are displayed not less than three to the mile, along all exterior boundaries thereof, forbidding such shooting or hunting, hunts, pursues, takes, kills, or destroys, any quail,



**627b.** Every common carrier which receives for shipment or transportation from, or which ships or transports for, any one person during any one calendar day more than twenty-five quail, partridge, pheasant, grouse, sage hen, dove, rail, snipe, curlew, ibis, plover, or other shore birds (*Limicolae*), or more than thirty-five wild ducks, or which ships or transports, or any person who offers for shipment or transportation, any of the said birds or any deer, or any deer meat, in any quantity, unless such birds or deer or deer meat are at all times in open view and labeled with the name and residence of the person by whom they are shipped, is guilty of a misdemeanor; **provided** that nothing in this section contained shall be construed to permit any person to have in his possession any game or fish contrary to the provisions of this chapter, nor to permit any common carrier to have in its possession more than the above specified number of said birds during any one calendar day, though lawfully received, except during the shipment or transportation thereof. (In effect March 21, 1907.)



partridge, pheasant, grouse, dove, wild duck, snipe, curlew, ibis, or plover, or any deer, without permission first obtained from the owner or person in possession of such ground, or who maliciously tears down, mutilates or destroys any sign, signboard, or other notice forbidding shooting on private property, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1875-6, 113. Rep. 1883, 82. En. Stats. 1895, 258. Am'd. 1897, 92; 1901, 821.

Cal. Rep. Cit. 119, 578.

**§ 627a. Unlawful carrying of deer and other game.** Every railroad company, express company, transportation company, or other common carrier, its officers, agents, and servants, and every other person who transports, carries or takes out of this state, or who receives for the purpose of transporting from this state, any deer, deer skin, buck, doe or fawn, or any quail, partridge, pheasant, grouse, or sage hen or prairie chicken, dove, wild pigeon, or any wild duck, rail, snipe, ibis, curlew, plover, or other shore birds (*Limicolae*), except for the purpose of propagation or scientific purposes, under a permit, in writing, first obtained from the board of fish commissioners of the State of California, or who transports, carries or takes from the state, or receives for the purpose of transportation from the state, the carcass of any such animal of any such bird, or any part of the carcass of any such animal or bird, is guilty of a misdemeanor. En. Stats. 1895, 259. Rep. 1897, 93. En. Stats. 1901, 821. Am'd. 1905, 257.

**§ 627b. Limit as to shipment of certain game.** Every railroad company, steamship company, express company, transportation company, transfer company, and every other person who ships, or receives for shipment, or transportation, from any one person, during any one calendar day, more than twenty-five quail, partridge, pheasant, grouse, or sage hen, doves, rail, snipe, curlew, ibis, plover, or other shore birds (*Limicolae*), or more than fifty wild ducks or who transports any of the said birds, or any deer, in any quantity, unless such birds or deer are at all times in open view, and labeled with the name and residence of the person by whom they are shipped, is guilty of a misdemeanor. En. Stats. 1895, 259. Rep. 1897, 93. En. Stats. 1901, 821. Am'd. 1905, 257.

**§ 627c. Transporting out of the state. (Repealed.)** En. Stats. 1895, 259. Rep. 1897, 93.

§ 627d. **Penalty.** (Repealed.) En. Stats. 1895, 259. Rep. 1897, 93.

§ 628. **Lobster or crawfish.** Every person who, between the first day of April and the fifteenth day of September of each year, buys, sells, takes, catches, kills or has in his possession, any lobster or crawfish; or who at any time has in his possession any lobster or crawfish of less than nine and one-half inches in length, measured from one extremity to the other, exclusive of legs, claws or feelers; or who, at any time, offers for shipment, ships, or receives for shipment or transportation, from the State of California to any place in any other state, territory, or foreign country, any dried shrimp or shrimp shells; or who, between the first day of September and the first day of November of each year, buys, sells, takes, catches, kills, or has in his possession, any crab; or who, at any time, buys, sells, offers for sale, takes, catches, kills, or has in his possession, any sturgeon, or any female crab, or any crab which shall measure less than six inches across the back, or any abalones or abalone shells of the kind known to commerce as the black abalone (*Haliotis californica*), the shell of which shall measure less than twelve inches around the outer edge of the shell, or any other abalone shells, or abalones, the shell of which shall measure less than fifteen inches around the outer edge of the shell, is guilty of a misdemeanor. En. February 14, 1872. Am'd. 1875-6, 114; 1877-8, 120. Rep. 1883, 82. En. Stats. 1895, 260. Am'd. 1897, 347; 1901, 54; 1903, 23; 1905, 186.

§ 628a. **Striped bass.** Every person who, at any time, buys, sells, offers for sale, takes, catches, kills, or has in his possession, and striped bass of less than three pounds in weight, is guilty of a misdemeanor. En. Stats. 1895, 260. Rep. 1897, 348. En. Stats. 1905, 186.

§ 628b. **Black Bass.** Every person who, between the first day of January and the first day of June of each year, buys, sells, offers for sale, takes, catches, kills, or has in his possession, any black bass; or who, at any time, except with hook and line, takes, catches or kills any black bass, is guilty of a misdemeanor. En. Stats. 1905, 187.

§ 628c. **Young fish of any species; fish in pond or reservoir belonging to state; penalty.** Every person who, by seine or other means, catches the young fish of any species and does not immediately return the same to the water alive, or who buys, sells or offers for sale, or has in his possession, any such fish, whether fresh or dried; or who

**628.** Every person who, between the fifteenth day of February and the fifteenth day of September of each year, buys, sells, takes, catches, kills, or has in his possession, any lobster or crawfish; or who at any time has in his possession, any lobster or crawfish of less than eleven inches in length, measured from one extremity to the other, exclusive of legs, claws, or feelers; or who, at any time, offers for shipment, ships, or receives for shipment or transportation, from the State of California to any place in any other state, territory or foreign country, any dried shrimp or shrimp shells of shrimp caught or taken in the waters of this state is guilty of a misdemeanor; **provided**, that the possession of such dried shrimp or shrimp shells shall be prima facie evidence of the fact that such dried shrimp or shrimp shells are of shrimp which were caught or taken in the waters of this state; and every person who, between the first day of September and the first day of November of each year, buys, sells, takes, catches, kills, or has in his possession, any crab; or who, at any time, buys, sells, offers for sale, takes, catches, kills, or has in his possession, any sturgeon, or fresh sturgeon eggs, or any female crab, or any crab which shall measure less than six inches across the back, or any abalones or abalone shells of the kind known to commerce as the black abalone (*Haliotis californica*), the shell of which shall measure less than twelve inches around the outer edge of the shell, or any other abalone shells, or abalones, the shell of which shall measure less than fifteen inches around the outer edge of the shell; or every person who takes, catches, kills, or has in his possession, any abalones or abalone shells taken from any of the waters of this state by the use of diving suits or diving paraphernalia of any kind, is guilty of a misdemeanor. (In effect March 15, 1907.)

**628a.** Every person who, at any time, buys, sells, offers for sale, or takes, catches, kills or has in his possession, any striped bass of less than three pounds in weight; or who, at any time, offers for shipment, ships or receives for shipment or transportation from the State of California to any place in any other state, territory or foreign country any striped bass of less than three pounds in weight, caught or taken in the waters of this state, is guilty of a misdemeanor; **provided** that the possession of such striped bass shall be prima facie evidence of the fact that such striped bass were caught or taken in the waters of this state. (In effect March 15, 1907.)

**628b.** Every person who, between the first day of January and the first day of June of each year, buys, sells, offers for sale, takes, catches, kills, or has in his possession, any black bass; or who, at any time, except with hook and line, takes, catches, or kills any black bass; or who takes, catches, kills, or has in his possession, more than fifty black bass during any one calendar day, is guilty of a misdemeanor. (In effect March 15, 1907.)



catches, takes, kills, or carries away any fish from any pond or reservoir belonging to, or controlled by, the board of fish commissioners, or any person or corporation, without the consent of the owners thereof, which pond or reservoir has been stocked with fish; or who, except with hook and line, takes, catches, or kills any kind of fish in any river or stream upon which a fish hatchery is maintained, is guilty of a misdemeanor. Nothing in this section, or elsewhere in this code contained, shall prohibit the United States fish commission and the fish commission of this state, from taking at all times such fish as they may deem necessary for scientific purposes or for purposes of propagation. En. Stats. 1905, 187.

§ 628d. **Fine or imprisonment; disposition of fines.** Every person found guilty of a violation of any of the provisions of Sections 628, 628a, 628b, and 628c, shall be punished by a fine of not less than twenty dollars nor more than five hundred dollars, or by imprisonment in the county jail, in the county in which the conviction is had, not less than twenty nor more than one hundred and fifty days, or by both such fine and imprisonment. All fines collected for any violation of any of the provisions of said sections must be paid into the state treasury to the credit of the "Fish Commission Fund." En. Stats. 1905, 187.

§ 629. **Screen over mill-race, pipe, etc.; penalty; disposition of fines.** Any person, company, or corporation, owning, in whole or in part, or leasing, operating, or having in charge any mill-race, irrigating ditch, pipe, flume, or canal, taking or receiving its waters from any river, creek, stream, or lake in which fish have been placed, or may exist, shall put, or cause to be placed and maintained, over the inlet of such pipe, flume, ditch, canal, or mill-race, a screen of such construction and fineness, strength, and quality as shall prevent any such fish from entering such ditch, pipe, flume, canal, or mill-race, when required to do so by the state board of fish commissioners. Any person, company, or corporation violating any of the provisions of this section, or who shall neglect or refuse to put up or maintain such screen, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars or imprisoned in the county jail of the county in which the conviction shall be had not less than ten days, or by both such fine and imprisonment; and all fines imposed and collected for violation of any of the provisions of this section shall

be paid into the state treasury to the credit of the "Fish Commission Fund"; provided, that the continuance from day to day of the neglect or refusal, after notification in writing by the state board of fish commissioners, shall constitute a separate offense for each day. En. February 14, 1872. Rep. 1883, 82. En. Stats. 1895, 260. Am'd. 1903, 24; 1905, 187.

Cal. Rep. Cit. 77, 32.

Acts relating to fishing and the protection of fish: See post, Appendix, title Fish. -

§ 630. Use of phosphorus on land in certain counties prohibited. (Repealed.) En. February 14, 1872. Rep. 1897, 348.

§ 631. Net, pound, cage, trap, etc., not to be used. Every person who takes, kills, or destroys, by use of any net, pound, cage, trap, set line or wire, or by the use of any poisonous substance, any of the birds or animals mentioned in this chapter, or who transports, buys, sells, or gives away, offers or exposes for sale, or has in his possession, any of the said birds or animals that have been taken, killed, or captured by the use of any net, pound, cage, trap, set line or wire, or by the use of any poisonous substance, whether taken in the State of California, or shipped into the state from any other state, territory or foreign country, is guilty of a misdemeanor; provided, that the same may be taken for the purpose of propagation, or for scientific purposes, written permission having first been obtained from the state board of fish commissioners. Proof of possession of any such birds or animals which do not show evidence of having been taken by means other than a net, pound, cage, trap, set line or wire, or by the use of any poisonous substance, is prima facie evidence in any prosecution for violation of the provisions of this section, that the person in whose possession such birds or animals are found, took, killed, or destroyed the same by means of a net, pound, cage, trap, set line or wire, or by the use of poisonous substance. En. February 14, 1872. Am'd. 1880, 42; 1881, 73; 1883, 81; 1887, 237; 1895, 261; 1901, 822; 1905, 257.

§ 631a. Penalty for violation. Every person found guilty of a violation of any of the provisions of sections 626, 626a, 626b, 626c, 626d, 626f, 626g, 626h, 626i, 626j, 626k, 626m, sections 627, 627a, 627b, and section 631, must be fined in a sum not less than twenty-five dollars nor more than five



632. Every person who, between the fifteenth day of November in any year and the first day of May of the year following, buys, sells, takes, catches, kills, or has in his possession, any variety of white fish or trout, except steelhead trout; or who, between the first day of April, 1907, and the first day of May, 1909, takes, catches, kills, or has in his possession any variety of golden trout; or who at any time buys, sells, or offers for sale any trout of less than one pound in weight; or who, at any time takes, catches or kills any trout, except with hook and line; or who, at any time, takes, catches, kills, or has in his possession, during any one calendar day, more than fifty trout; or who at any time takes or catches any trout, steelhead trout or salmon of less than five inches in length, without at once returning the same to the water from which it was taken or caught; or who, at any time, takes, catches, kills, or has in his possession, during any one calendar day, trout, other than steelhead trout, the total weight of which exceeds twenty-five pounds, is guilty of a misdemeanor. Every person found guilty of any violation of any of the provisions of this section must be fined in a sum not less than twenty dollars or be imprisoned in the county jail in the county in which the conviction shall be had, not less than ten days or be punished by both such fine and imprisonment; and all fines collected for any violation of any of the provisions of this section must be paid into the state treasury to the credit of the "fish commission fund." Nothing in this section prohibits the United States fish commission and the fish commission of this state from taking at all times such trout as they deem necessary for purpose of propagation or for scientific purposes. (In effect March 15, 1907.)



hundred dollars, or imprisonment in the county jail of the county in which the conviction shall be had, not less than twenty-five days nor more than one hundred and fifty days, or by both such fine and imprisonment. En. Stats. 1901, 822. Am'd. 1905, 258.

§ 631b. **Disposition of moneys from fines.** All fines paid or collected for the violation of any of the provisions of sections six hundred and twenty-six, six hundred and twenty-six a, six hundred and twenty-six b, six hundred and twenty-six c, six hundred and twenty-six d, six hundred and twenty-six e, six hundred and twenty-six f, six hundred and twenty-six g, six hundred and twenty-six h, six hundred and twenty-six i, six hundred and twenty-six j, six hundred and twenty-six k, six hundred and twenty-six m, six hundred and twenty-seven, six hundred and twenty seven a, six hundred and twenty-seven b, and six hundred and thirty-one, of this chapter, must be paid by the court in which the conviction shall be had into the state treasury to the credit of the game preservation fund, which fund is hereby created, and the moneys in said fund shall be applied to the payment of claims approved by the game commissioner or the state board of fish commissioners for the expense of protecting, restoring and introducing game into the state and to the payment of the expenses incurred in the prosecution of offenders against the provisions of the above-named sections. En. Stats. 1901, 822.

§ 631c. **Penalty for violation.** Every person found guilty of a violation of any of the provisions of section 626e must be fined in a sum not less than fifty dollars nor more than five hundred dollars or imprisonment in the county jail of the county in which the conviction shall be had, not less than fifty days nor more than one hundred and fifty days, or by both such fine or imprisonment. En. Stats. 1905, 258.

§ 632. **Trout, steelhead trout; limit of catch; penalty; disposition of fines.** Every person who, between the first day of November in any year and the first day of April of the year following, buys, sells, takes, catches, kills, or has in his possession, any variety of trout, except steelhead trout (*Salmo gairdneri*); or who, between the first day of February and the first day of April, or between the tenth day of September and the sixteenth day of October of each year, buys, sells, takes, catches, kills or has in his possession, any steelhead trout (*Salmo gairdneri*); or who, between the first

day of November and the first day of April of the year following, takes, kills, or catches any steelhead trout above tide water; or who, at any time, buys, sells, or offers for sale, any trout of less than one pound in weight; or who, at any time, takes, catches, or kills any trout except with hook and line; or who, at any time, takes, catches, kills, or has in his possession, during any one calendar day, more than fifty trout; or who, at any time, takes, catches, kills, or has in his possession, during any one calendar day, trout, other than steelhead trout, the total weight of which exceeds twenty-five pounds, is guilty of a misdemeanor. Every person found guilty of any violation of any of the provisions of this section must be fined in a sum not less than twenty dollars or be imprisoned in the county jail in the county in which the conviction shall be had, not less than ten days, or be punished by both such fine and imprisonment, and all fines collected for any violation of any of the provisions of this section must be paid into the state treasury to the credit of the "Fish Commission Fund." Nothing in this section prohibits the United States fish commission and the fish commission of this state from taking at all times such trout as they deem necessary for the purpose of propagation or for scientific purposes. En. February 14, 1872. Am'd. 1873-4, 464; 1875-6, 114; 1883, 81; 1895, 260; 1897, 20; 1901, 55; 1903, 24; 1905, 188.

§ 632a. **Shipment of trout; penalty; disposition of fines.** Every railroad company, steamship company, express company, transportation company, transfer company, and every other person who ships, or receives for shipment, or transportation, from any one person, during any one calendar day, more than fifty trout, or trout, excepting steelhead trout, the total weight of which exceeds twenty-five pounds, or who transports any trout, in any quantity, unless such trout are at all times in open view, and labeled with the name and residence of the person by whom they are shipped, is guilty of a misdemeanor, and is punishable by a fine of not less than twenty dollars, or by imprisonment in the county jail in the county in which the conviction is had, not less than ten days, or by both such fine and imprisonment; and all fines imposed and collected for any violation of any of the provisions of this section shall be paid into the state treasury to the credit of the "Fish Commission Fund." En. Stats. 1895, 261. Rep. 1897, 348. En. Stats. 1905, 188.

**632½ (new).** Every person who, between the first day of February and the first day of April of any year, or who, between the seventeenth day of September and the twenty-third day of October of any year, buys, sells, takes, catches, kills, or has in his possession any steelhead trout, or who between the first day of April and the first day of May of any year, takes, catches, or kills, any steelhead trout above tide water, or who, at any time takes, catches or kills, any steelhead trout, except with hook and line, or has in his possession any steelhead trout which have been taken, caught or killed, except with hook and line; or who, at any time takes, catches, kills or has in his possession, during any one calendar day, more than fifty steelhead trout, is guilty of a misdemeanor. Every person who offers for shipment, ships, or receives for shipment or transportation from the State of California to any place in any other state, territory or foreign country, any steelhead or other trout caught or taken in the waters of this state, is guilty of a misdemeanor; **provided**, that the possession of such steelhead or other trout shall be prima facie evidence of the fact that such steelhead or other trout were caught or taken in the waters of this state. Every person found guilty of any violation of any of the provisions of this section must be fined in a sum not less than twenty dollars or be imprisoned in the county jail in the county in which the conviction shall be had, not less than ten days or to be punished by both such fine and imprisonment, and all fines collected for any violation of any of the provisions of this section must be paid into the state treasury to the credit of the "fish commission fund." Nothing in this section prohibits the United States fish commission and the fish commission of this state from taking at all times such trout as they deem necessary for the purpose of propagation or for scientific purposes. (In effect March 15, 1907.)

**632b (new).** Every person who, at any time, prior to the first day of January one thousand nine hundred and eleven, buys, sells, offers for sale, takes, catches, kills, or has in his possession, any Sacramento perch, is guilty of a misdemeanor and is punishable by a fine of not less than twenty dollars or more than five hundred dollars, or by imprisonment in the county jail in the county in which the conviction is had, not less than twenty days or more than one hundred and fifty days, or be punished by both such fine and imprisonment, and all fines collected for any violation of the provisions of this section must be paid into the state treasury to the credit of the "fish commission fund." (In effect March 15, 1907.)



**634.** Every person who between the seventeenth day of September and the twenty-third day of October of each year, takes, catches or kills, buys, sells, offers or exposes for sale, or has in his possession any fresh salmon; every person who, between the twenty-third day of October and the fifteenth day of November of each year, takes or catches any salmon above tide water; every person who shall set or draw, or assist in setting or drawing, any net or seine for the purpose of taking or catching salmon, shad or striped bass, in any of the waters of this state, at any time between sunrise of each Saturday and sunset of the following Sunday; every person who, for the purpose of catching salmon, shad or striped bass, in any of the waters of this state, fishes with or uses any seine or net, dragnet, or paranzella, the meshes of which are, when drawn closely together and measured inside the knot, less than seven and one-half inches in length, is guilty of a misdemeanor, and is punishable by a fine not less than two hundred dollars, or by imprisonment in the county jail in the county in which the conviction shall be had, not less than one hundred and fifty days, or by both such fine and imprisonment, and all fines imposed and collected for any violations of the provisions of this section shall be paid into the "fish commission fund." In the construction and meaning of this section, the limits of tide water in the Sacramento river shall be deemed to extend from its mouth to the city of Sacramento; in the San Joaquin river, from its mouth to the Southern Pacific railroad bridge near Lathrop, in San Joaquin county; in Eel river, in Humboldt county, from its mouth to East Ferry, above the town of Fortuna; in the Klamath river, to a point on the river north of the residence of James McGarvey; in Smith river, in Del Norte county, from its mouth to Higgins Ferry. Nothing in this section shall prohibit the United States fish commission and the fish commission of this state, from taking, at all times, such fish as they deem necessary for the purpose of artificial hatching. It shall be no defense in a prosecution for the violations of any of the provisions of this section that the fish were caught or taken outside or within this state. (In effect March 15, 1907.)





§ 632b. Only hook and line to be used in streams where U. S. hatchery is located. (Repealed.) En. stats. 1895, 261. Rep. 1897, 348.

§ 633. Trout, sale, taking or possession of. (Repealed.) En. February 14, 1872. Am'd. 1877-8, 120; 1891, 110; 1895, 262. Rep. 1897, 348.

§ 634. Taking, sale, or possession of salmon, when prohibited. Every person who, between the tenth day of September and the sixteenth day of October of each year, takes or catches, buys, sells, offers or exposes for sale, or has in his possession any fresh salmon; every person who, between the fifteenth day of October and the fifteenth day of November of each year, takes or catches any salmon above tide water; every person who shall set or draw, or assist in setting or drawing, any net or seine for the purpose of taking or catching salmon, shad, striped bass, or sturgeon, in any of the waters of the state, at any time between sunrise of each Saturday and sunset of the following Sunday; every person who, for the purpose of catching salmon, shad, striped bass, or sturgeon, in any of the waters of the state, fish with or use any seine or net, drag-net, or paranzella, the meshes of which are, when drawn closely together and measured inside the knot, less than seven and one-half inches in length, is guilty of a misdemeanor, and is punishable by a fine not less than two hundred dollars, or by imprisonment in the county jail in which the conviction shall be had, not less than one hundred and fifty days, or by both such fine and imprisonment, and all the fines imposed and collected for any violations of the provisions of this section shall be paid into the "fish commission fund." In the construction and meaning of this section, the limits of tide water in the Sacramento River shall be deemed to extend from its mouth to the city of Sacramento; in the San Joaquin River, from its mouth to the Southern Pacific Railroad bridge near Lathrop, in San Joaquin County; in Eel River, in Humboldt County, from its mouth to East Ferry, above the town of Fortuna; in the Klamath River, to a point on the river north of the residence of James McGarvey; in Smith River, in Del Norte County, from its mouth to Higgins Ferry. Nothing in this section shall prohibit the United States fish commission and the fish commission of this state, from taking, at all times, such fish as they deem necessary for the purposes of artificial hatching. It shall be no defense in a prosecution for the

violation of any of the provisions of this section that the fish were caught or taken outside or within this state. En. February 14, 1872. Am'd. 1873-4, 465; 1875-6, 114; 1877-8, 120; 1881, 13; 1883, 81; 1885, 99; 1895, 262; 1897, 20.

Cal. Rep. Cit. 73, 258; 107, 281; 139, 115; 139, 116; 139, 465.

§ 635. **Use of explosives, and pollution of waters.** Every person who places or causes to be placed in any of the waters of this state, dynamite, gunpowder, or other explosive compound, for the purpose of killing or taking fish; or who takes, procures, kills, or destroys any fish of any kind by means of explosives; or who places or allows to pass, or who places where it can pass into any of the waters of this state, any lime, gas, tar, cocculus indicus, slag, sawdust, shavings, slabs, edgings, mill or factory refuse, or any substance deleterious to fish, is guilty of a misdemeanor, and is punishable by a fine of not less than two hundred and fifty dollars, or by imprisonment in the county jail in the county in which the conviction is had, not less than one hundred and twenty-five days, or by both such fine and imprisonment; and all fines imposed and collected for any violation of any of the provisions of this section shall be paid into the state treasury to the credit of the "fish commission fund." En. February 14, 1872. Am'd. 1875-6, 115; 1889, 61; 1895, 262; 1897, 348; 1901, 55; 1903, 25.

Cal. Rep. Cit. 107, 281; 139, 116; 143, 641.

§ 636. **Setting net, trap, etc., for fish.** Every person who shall cast, extend, or set any seine or net of any kind, for the catching of any fish in any river, stream, or slough of this state, which shall extend more than one third across the width of said river, stream, or slough, at the time and place of such fishing; every person who shall cast, extend, set, use, or continue, or who shall assist in casting, extending, using, or continuing "Chinese shrimp or bag net," or a net of similar character, for the catching of fish in the waters of this state; every person who shall cast, extend, set, use, or continue, or have in his possession, or who shall assist in casting, extending, or using "Chinese sturgeon lines," or lines of a similar character; every person who shall set, use or continue, or shall assist in setting, using, or continuing any pound weir, set-net, trap, or any other fixed or permanent contrivance for catching fish in the waters of this state—and every net shall be considered a set-net that is

secured in any way and not free to drift with the current or tide—is guilty of a misdemeanor, and is punishable by a fine of not less than one hundred dollars, or by imprisonment in the county jail in the county in which the conviction shall be had, not less than fifty days, or by both such fine and imprisonment; and all the fines imposed and collected for any violation of any of the provisions of this section shall be paid into the “fish commissioners’ fund.” En. February 14, 1872. Am’d. 1875-6, 115; 1877-8, 120; 1881, 12; 1883, 82; 1887, 237; 1893, 215; 1895, 263; 1897, 349.

Cal. Rep. Cit. 57, 251; 57, 252; 73, 258; 107, 281; 114, 371; 124, 151; 124, 152; 124, 153; 124, 154.

**§ 636a. Nets, seines, etc., prohibited.** Any net, seine, drag-net, paranzella, or set-net used for taking or catching fish, which shall be used or maintained in any of the waters of this state in violation of any existing or hereafter enacted statutes or laws of this state for the protection of fish, is hereby declared to be a public nuisance, and it is the duty of every peace officer to seize and keep the same and report such seizure to the board of fish commissioners of the state. Thereupon said board must commence proceedings in the superior court of the county or city and county in which the same shall be seized, by filing a petition in said court, asking for a judgment forfeiting such net, seine, drag-net, paranzella, or set-net so seized, and ordering the destruction thereof. Upon the filing of such petition, is the duty of the clerk of said court to fix a time for the hearing thereof and to cause notices to be posted for the space of fourteen days in at least three public places in the town, city, or city and county, where the court is held, setting forth the substance of such petition and the time and place fixed for its hearing, and if at the time fixed for such hearing, no person appears and claims such net, seine, drag-net, paranzella, or set-net, the court must proceed to hear and determine said proceeding according to law, and upon proof that the said net, seine, drag-net, paranzella, or set-net was used in violation of law, must order the same to be forfeited and destroyed. En. Stats. 1901, 56.

**§ 637. Fish commissioners to examine dams. Fishways.** It shall be the duty of the state board of fish commissioners to examine, from time to time, all dams and artificial obstructions in all rivers and streams in this state nat-

urally frequented by salmon, shad, and other migratory fish; and if, in their opinion, there is not free passage for fish over or around any dam or artificial obstruction, to notify the owners or occupants thereof to provide the same, within a specified time, with a durable and efficient fishway, of such form and capacity, and in such location as shall be determined by the fish commissioners, or persons authorized by them, and such fishway must be completed by the owners or occupants of such dam or artificial obstruction to the satisfaction of said commissioners, within the time specified; and it shall be incumbent upon the owners or occupants of all dams or artificial obstructions, where the state board of fish commissioners require such fishways to be provided, to keep the same in repair and open and free from obstruction to the passage of fish at all times; and no person shall willfully destroy, injure, or obstruct any such fishway, or at any time take or catch any salmon, shad, or other migratory fish or trout, except by hook and line within three hundred feet of any fishway required by the state board of fish commissioners to be provided and kept open, or at any time take or catch any such fish in any manner within fifty feet of such fishway; and every person violating any of the provisions of this act is guilty of a misdemeanor, and every person found guilty of a violation of any the provisions of this act must be fined in a sum not less than one hundred dollars, or imprisoned in the county jail of the county in which the conviction shall be had not less than fifty days, or by both such fine and imprisonment; and all fines imposed and collected for any violations of the provisions of this act shall be paid into the state treasury to the credit of the "fish commission fund." En. February 14, 1872. Am'd. 1891, 93; 1903, 25.

Cal. Rep. Cit. 135, 470.

Acts relating to fishing and the protection of fish: See post, Appendix, title Fish.

Fishway, act relating to: See post, Appendix, title Fish.

§ 637a. **Killing of birds other than game, meadow lark, etc.; exceptions; certain birds not included.** Every person who, in the State of California, shall at any time, hunt, shoot, shoot at, pursue, take, kill, or destroy, buy, sell, give away, or have in his possession, except upon a written permit from the board of fish commissioners of the State of California, for the purpose of propagation or for education or scientific

**637a.** Every person who, in the State of California, shall at any time, hunt, shoot, shoot at, pursue, take, kill, or destroy, buy, sell, give away, or have in his possession, except upon a written permit from the board of fish commissioners of the State of California, for the purpose of propagation or for education or scientific purposes, any meadow lark, robin, or any wild bird, living or dead, or any part of any dead wild bird, or who shall rob the nest, or take, sell or offer for sale or destroy the eggs of any meadow lark, robin, or of any wild bird, is guilty of a misdemeanor; **provided** that nothing in this section shall prohibit the killing of a meadow lark, robin, or other wild bird by the owner or tenant of any premises where such bird is found destroying berries, fruit or crops growing on such premises, but the birds so killed shall not be shipped or sold. The English sparrow, sharp-shinned hawk, Cooper's hawk, duck hawk, great horned owl, bluejay, Butcher bird, house finch (known also as the California linnet), wild pigeon, all fish-eating birds, except sea-gulls and the blue and white crane or heron, and all birds otherwise protected by the provisions of this code, are not included among the birds protected by this section. (In effect March 21, 1907.)

**637b (new).** The provisions of this chapter prohibiting any person from having in his possession any fish or game or parts thereof at any time, or during the seasons herein specified, shall, unless express provisions be made herein to the contrary, apply to all such fish or game or parts thereof, whether the said fish or game or the fish or game from which the parts were taken were caught or killed in the State of California, or the said fish or game or parts thereof were shipped into this state from any other state, territory or foreign country. (In effect March 21, 1907.)



purposes, any meadow lark, or any wild bird, living or dead, or any part of any dead wild bird, or who shall rob the nest, or take, sell or offer for sale or destroy the eggs of any meadow lark or of any wild bird, is guilty of a misdemeanor; provided, that nothing in this section shall prohibit the killing of a meadow lark or other wild bird by the owner or tenant of any premises where such bird is found destroying berries, fruit or crops growing on such premises, but the birds so killed shall not be shipped or sold. The English sparrow, sharp-shinned hawk, Cooper's hawk, duck hawk, great horned owl, bluejay, house finch (known also as the California linnet), and all birds otherwise protected by the provisions of this code and those birds commonly known as game birds, are not included among the birds protected by this section. En. Stats. 1901, 573. Am'd. 1905, 114.

## CHAPTER II.

### OF OTHER AND MISCELLANEOUS OFFENSES.

- § 638. Neglect or postponement of telegraphic or telephonic messages.
- § 639. Employee using information contained in telegraphic or telephonic messages.
- § 640. Clandestinely learning the contents of a telegraphic or telephonic message.
- § 641. Bribing telegraph or telephone operator.
- § 642. Collecting tolls, etc., at San Francisco, without authority.
- § 643. Violations of police regulations of San Francisco Harbor.
- § 644. Enticing seamen to desert.
- § 645. Harboring deserting seamen.
- § 646. Aiding apprentices to run away or harboring them.
- § 647. Vagrants.
- § 648. Issuing or circulating paper money.
- § 649. Officers of fire department issuing false certificates.
- § 650. Sending letters threatening to expose another.
- § 650½. Seriously injuring persons or property, etc., a misdemeanor.
- § 651. Requiring apprentices to work more than eight hours.
- § 652. National Guard; failure to attend parade.
- § 653. Members of National Guard, insubordination of.
- § 653½. Appraiser accepting fees not allowed.
- § 653b. Abuse of school teachers.
- § 653c. Unlawful to permit workmen upon public works to work more than eight hours per day.
- § 653d. Retaining wages of employee.
- § 654. Abuse of school teachers. (Repealed.)

**§ 638. Neglect or postponement of telegraphic or telephonic messages.** Every agent, operator, or employee of any telegraph or telephone office, who willfully refuses or neglects to send any message received at such office for transmission, or willfully postpones the same out of its order, or willfully refuses or neglects to deliver any message received



by telegraph or telephone, is guilty of a misdemeanor. Nothing herein contained must be construed to require any message to be received, transmitted, or delivered, unless the charges thereon have been paid or tendered, nor to require the sending, receiving, or delivery of any message counseling, aiding, abetting, or encouraging treason against the government of the United States or of this state or other resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime. En. February 14, 1872. Am'd. 1905, 690.

The change consists in the insertion of the words "or telephone," before "office."—Code Commissioner's Note.

Carriers of messages: See Civ. Code, secs. 2161, 2162, 2207.

**§ 639. Employee using information contained in telegraphic or telephonic messages.** Every agent, operator, or employee of any telegraph or telephone office, who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, operator, or employee, or trades or speculates upon any such information so obtained, or in any manner turns, or attempts to turn, the same to his own account, profit, or advantage, is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or both by such fine and imprisonment. En. February 14, 1872. Am'd. 1905, 690.

The change consists in the insertion of the words "or telephone," before "office."—Code Commissioner's Note.

**§ 640. Clandestinely learning contents of telegraphic or telephonic messages.** Every person who, by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently reads, or attempts to read, any message, or to learn the contents thereof, whilst the same is being sent over any telegraph or telephone line, or willfully and fraudulently, or clandestinely, learn or attempts to learn the contents or meaning of any message, while the same is in any telegraph or telephone office, or is being received thereat or sent therefrom, or who uses or attempts to use, or communicates to others, any information so ob-



tained, is punishable as provided in section six hundred and thirty-nine. En. February 14, 1872. Am'd. 1905, 691.

The change consists in the insertion of the words "or telephone," before "line" and before "office."—Code Commissioner's Note.

**§ 641. Bribing telegraph or telephone operator.** Every person who, by the payment or promise of any bribe, inducement, or reward, procures or attempts to procure any telegraph or telephone agent, operator, or employee to disclose any private message, or the contents, purport, substance, or meaning thereof, or offers to any such agent, operator, or employee any bribe, compensation, or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator, or employee, or uses or attempts to use any such information so obtained, is punishable as provided in section six hundred and thirty-nine. En. February 14, 1872. Am'd. 1905, 691.

The change consists in the insertion of the words "or telephone," before "act."—Code Commissioner's Note.

Cal. Rep. Cit. 61, 622.

**§ 642. Collecting tolls, etc., at San Francisco, without authority.** Every person who collects any toll, wharfage, or dockage, or lands, ships, or removes any property upon or from any portion of the water-front of San Francisco, or from or upon any of the wharves, piers, or landings under the control of the board of state harbor commissioners, without being by such board authorized so to do, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 71, 7.

Wharfage: See Pol. Code, secs. 2527, 2582.

**§ 643. Violations of police regulations of San Francisco Harbor.** Every person who violates any of the provisions of the laws of this state relating to sailor boarding-houses and shipping-offices in San Francisco, or who receives any gratuity or reward other than as therein provided, for the performance of any services under a license issued pursuant to the provisions of such laws, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 71, 7.

**§ 644. Enticing seamen to desert.** Every person who entices seamen to desert from any vessel lying in the waters of this state, and on board of which they have

shipped for a term or voyage unexpired at the time of such enticement, is guilty of a misdemeanor. En. February 14, 1872.

§ 645. **Harboring deserting seamen.** Every person who harbors or secretes any seaman, knowing him to be shipped, and with a view to persuade or enable him to desert, is guilty of a misdemeanor. En. February 14, 1872.

§ 646. **Aiding apprentices to run away or harboring them.** Every person who willfully and knowingly aids, assists or encourages to run away, or who harbors or conceals any person bound or held to service or labor, is guilty of a misdemeanor. En. February 14, 1872.

Apprentices: Civ. Code, secs. 264 et seq; and Appendix to Civ. Code, title Apprentices.

§ 647. **Vagrants.** 1. Every person (except a California Indian) without visible means of living who has the physical ability to work, and who does not seek employment, nor labor when employment is offered him; or,

2. Every healthy beggar who solicits alms as a business; or,

3. Every person who roams about from place to place without any lawful business; or,

4. Every person known to be a pickpocket, thief, burglar, or confidence operator, either by his own confession, or by his having been convicted of either of such offenses, and having no visible or lawful means of support, when found loitering around any steamboat landing, railroad depot, banking institution, brokers' office, place of amusement, auction room, store, shop, or crowded thoroughfare, car, or omnibus, or at any public gathering or assembly; or

5. Every idle, or lewd, or dissolute person, or associate of known thieves; or,

6. Every person who wanders about the streets at late or unusual hours of the night, without any visible or lawful business; or,

7. Every person who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof; or,

8. Every person who lives in and about houses of ill-fame; or,

**645.** Repealed. (In effect March 15, 1907.)



9. Every person who acts as a runner or capper for attorneys in and about police courts or city prisons; or,

10. Every common prostitute; or,

11. Every common drunkard, is a vagrant, and is punishable by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. En. February 14, 1872. Am'd. 1891, 130; 1903, 96.

Cal. Rep. Cit. 63, 304; 72, 385; 82, 614; 88, 102; 88, 113; 108, 57; 147, 292.

Jurisdiction of police courts in cases of: See Pol. Code, sec. 4426.

\* § 648. **Issuing or circulating paper money.** Every person who makes, issues, or puts in circulation any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, except as authorized by the laws of the United States, for the first offense is guilty of a misdemeanor, and for each and every subsequent offense is guilty of felony. En. February 14, 1872.

See Civ. Code, sec. 356.

§ 649. **Officers of fire department issuing false certificates.** Every officer of a fire department who willfully issues, or causes to be issued, any certificate of exemption to a person not entitled thereto, is guilty of a misdemeanor. En. February 14, 1872.

§ 650. **Sending letters threatening to expose another.** Every person who knowingly and willfully sends or delivers to another any letter or writing, whether subscribed or not, threatening to accuse him or another of a crime, or to expose or publish any of his failings or infirmities, is guilty of a misdemeanor. En. February 14, 1872.

See ante, sec. 523.

§ 650½. **Seriously injuring persons or property, etc., a misdemeanor.** A person who willfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace or health, or which openly outrages public decency, or who willfully and wrongfully in any manner, verbal or written, uses another's name for accomplishing lewd or licentious purposes, whether such purposes are ac-

complished or not, or who willfully and wrongfully uses another's name in any manner that will affect, or have a tendency to affect the moral reputation of the person whose name is used, generally, or in the estimation of the person or persons to whom it is so used, or who with intent of accomplishing any lewd or licentious purpose, whether such purpose is accomplished or not, personifies any person other than himself, or who causes or procures any other person or persons to identify him, or to give assurance that he is any other person than himself to aid or assist him to accomplish any lewd or licentious purpose, for which no other punishment is expressly prescribed by this code, is guilty of a misdemeanor. En. Stats. 1903, 235.

**§ 651. Requiring apprentices to work more than eight hours.** Every person having a minor child under his control, either as a ward or an apprentice, who, except in vinicultural or horticultural pursuits, or in domestic or household occupations, requires such child to labor more than eight hours in any one day, is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 63, 304.

**§ 652. National Guard; failure to attend parade.** Every commissioned officer of the National Guard who willfully fails to attend any parade or encampment, and every member of the National Guard who neglects or refuses to obey the lawful command of his superior on any day of parade or encampment, or to perform such military duty as may be lawfully required of him, is punishable by a fine of not less than five nor more than one hundred dollars. En. February 14, 1872.

Cal. Rep. Cit. 109, 291.

Disobeying orders: Pol. Code, sec. 1930.

Parades and drills: Pol. Code, secs. 2018-2030.

**§ 653. Members of National Guard, insubordination of.** Every member of the National Guard who, when duly notified, fails to appear at a parade, or who disobeys any lawful order, or who uses disrespectful language towards his superior, or who commits any act of insubordination, is guilty of a misdemeanor. En. February 14, 1872.

**§ 653½. Appraiser accepting fees not allowed.** Any appraiser, appointed by virtue of section one thousand four

hundred and forty-four of the Code of Civil Procedure, who shall accept any fees, reward, or compensation other than that provided for by law, from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person, is guilty of a misdemeanor. En. Stats. 1899, 35.

§ 653b. Abuse of school teachers. Every parent, guardian, or other person who upbraids, insults, or abuses any teacher of the public schools, in the presence or hearing of a pupil thereof, is guilty of a misdemeanor. En. Stats. 1873-4, 435, as section 654. Renumbered and amended 1905, 658.

There are now in this Code two sections each numbered 654. The change consists in renumbering the one approved March 30, 1874, to read 653b.—Code Commissioner's Note.

There were formerly two sections 654. The one above renumbered 653b and amended in 1905, was enacted in 1873-4. The other, enacted in 1872, is unchanged.

Cal. Rep. Cit. 49, 395.

Abusing teacher in presence of a class a misdemeanor: See Pol. Code, sec. 1867.

Disturbing public schools or school meeting a misdemeanor: See Pol. Code, sec. 1868.

§ 653c. Unlawful to permit workmen upon public works to work more than eight hours per day. The time of service of any laborer, workman, or mechanic employed upon any of the public works of the State of California, or of any political subdivision thereof, or upon work done for said state, or any political subdivision thereof, is hereby limited and restricted to eight hours during any one calendar day; and it shall be unlawful for any officer, or agent of said state, or of any political subdivision thereof, or for any contractor or sub-contractor doing work under contract upon any public works aforesaid, who employs, or who directs or controls, the work of any laborer, workman, or mechanic, employed as herein aforesaid, to require or permit such laborer, workman, or mechanic, to labor more than eight hours during any one calendar day, except in cases of extraordinary emergency, caused by fire, flood, or danger to life or property, or except to work upon public military or naval defenses or works in time of war. Any officer or agent of the State of California, or of any political subdivision thereof, making or awarding, as such officer or agent, any contract, the execution of which involves or may

involve the employment of any laborer, workman, or mechanic upon any of the public works, or upon any work, hereinbefore mentioned, shall cause to be inserted therein a stipulation which shall provide that the contractor to whom said contract is awarded shall forfeit, as a penalty, to the state or political subdivision in whose behalf the contract is made and awarded, ten dollars for each laborer, workman, or mechanic employed, in the execution of said contract, by him, or by any subcontractor under him, upon any of the public works, or upon any work, hereinbefore mentioned, for each calendar day during which such laborer, workman, or mechanic is required or permitted to labor more than eight hours in violation of the provisions of this act; and it shall be the duty of such officer or agent to take cognizance of all violations of the provisions of said act committed in the course of the execution of said contract, and to report the same to the representative of the state or political subdivisions, party to the contract, authorized to pay to said contractor moneys becoming due to him under the said contract, and said representative, when making payment of moneys thus due, shall withhold and retain therefrom all sums and amounts which shall have been forfeited pursuant to the herein said stipulation. Any officer, agent, or representative of the State of California, or of any political subdivision thereof, who shall violate any of the provisions of this section, shall be deemed guilty of misdemeanor, and shall upon conviction be punished by fine not exceeding five hundred dollars, or by imprisonment, not exceeding six months, or by both such fine and imprisonment, in the discretion of the court. En. Stats. 1905, 666.

This is a new section, codifying word for word, the eight-hour law passed at the last session (Stats. 1903, p. 119.)—Code Commissioner's Note.

**§ 653d. Retaining wages of employee.** Every person who employs laborers upon public works, and who takes, keeps, or receives for his own use any part or portion of the wages due to any such laborers from the state or municipal corporation for which such work is done, is guilty of a felony. En. Stats. 1905, 667.

This is a new section, codifying the statute of 1871-2, page 951, to protect wages of labor, inserting, however, the words "for his own use," to make same conform to intention of original act.—Code Commissioner's Note.

See note to § 653b, ante.



## § 654. Abuse of school teachers.

There are now in this Code two sections each numbered 654. The change consists in renumbering the one approved March 30, 1874, to read 653b.—Code Commissioner's Note.

See note to § 653b, ante.

# TITLE XVI.

## GENERAL PROVISIONS.

- § 654. Acts made punishable by different provisions of this code.
- § 654a. False representation as to quality or merits of goods sold or advertised; penalty.
- § 655. Acts punishable under foreign law.
- § 656. Foreign conviction or acquittal.
- § 657. Contempt, how punishable.
- § 658. Mitigation of punishment in certain cases.
- § 659. Aiding in misdemeanor.
- § 660. Sending letters, when deemed complete.
- § 661. Removal from office for neglect of official duty.
- § 662. Omission to perform duty, when punishable.
- § 663. Attempts to commit crimes, when punishable.
- § 664. Attempts to commit crimes, how punishable.
- § 665. Restrictions upon the preceding sections.
- § 666. Second offense, how punished after conviction of former offense.
- § 667. Second offenses, how punished after conviction of attempt to commit a state prison offense. (Repealed.)
- § 668. Foreign conviction for former offense.
- § 669. Second term of imprisonment, when to commence.
- § 670. When term of imprisonment commences, etc.
- § 671. Imprisonment for life.
- § 672. Fine may be added to imprisonment.
- § 673. Civil rights of convict suspended.
- § 674. Civil death.
- § 675. Limitations on two preceding sections.
- § 676. Person of convict protected.
- § 677. Forfeitures.
- § 678. Valuation in gold coin.
- § 679. Coercion or compulsion of persons seeking employment.
- § 679a. Limiting sale of convict-made goods.
- § 680. Payment of wages to employees in a bar-room.

§ 654. Acts made punishable by different provisions of this code. An act or omission which is made punishable in different ways by different provisions of this code may be punished under either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other. In the cases specified in sections six hundred and forty-eight, six hundred and sixty-seven, and six hundred and sixty-eight, the punishments therein prescribed must be substituted for those prescribed for a first offense, if the

previous conviction is charged in the indictment and found by the jury. En. February 14, 1872.

Effect of plea of guilty: See post, sec. 1158.

§ 654a. **False representation as to quality or merits of goods sold or advertised; penalty.** Any person, firm or corporation doing business in this state as a merchant, who advertises or displays any brand of goods known to the general public and quotes prices in connection therewith as an inducement to attract purchasers to the place of business so advertised, who shall make verbal or show printed or written false statements regarding the quality or merits of the goods advertised is guilty of a misdemeanor. En. Stats. 1905, 228.

§ 655. **Acts punishable under foreign law.** An act or omission declared punishable by this code is not less so because it is also punishable under the laws of another state, government, or country, unless the contrary is expressly declared. En. February 14, 1872.

§ 656. **Foreign conviction or acquittal.** Whenever on the trial of an accused person it appears that upon a criminal prosecution under the laws of another state, government, or country, founded upon the act or omission in respect to which he is on trial, he has been acquitted or convicted, it is a sufficient defense. En. February 14, 1872.

Foreign conviction or acquittal: See also post, sec. 668.

§ 657. **Contempt, how punishable.** A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt. En. February 14, 1872.

Criminal contempts: See ante, sec. 166.

§ 658. **Mitigation of punishment in certain cases.** When it appears, at the time of passing sentence upon a person convicted upon indictment, that such person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion. En. February 14, 1872.

§ 659. **Aiding in misdemeanor.** Whenever an act is declared a misdemeanor, and no punishment for counsel-

ing or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act is guilty of a misdemeanor. En. February 14, 1872.

Cal. Rep. Cit. 105, 644.

Accessories defined: Sec. 32.

Accessories, how punished: Sec. 33.

§ 660. **Sending letters, when deemed complete.** In the various cases in which the sending of a letter is made criminal by this code, the offense is deemed complete from the time when such letter is deposited in any postoffice or any other place, or delivered to any person, with intent that it shall be forwarded. En. February 14, 1872.

**Threatening letters.**—Sending with intent to extort money: Sec. 523.

§ 661. **Removal from office for neglect of official duty.** In addition to the penalty affixed by express terms, to every neglect or violation of official duty on the part of public officers—state, county, city, or township—where it is not so expressly provided, they may, in the discretion of the court, be removed from office. En. February 14, 1872.

Removal other than by impeachment: See post, sec. 758 et seq.

§ 662. **Omission to perform duty, when punishable.** No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it. En. February 14, 1872.

§ 663. **Attempts to commit crimes, when punishable.** Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be tried for such crime. En. February 14, 1872.

Cal. Rep. Cit. 142, 14.

§ 664. **Attempts to commit crimes, how punishable.** Every person who attempts to commit any crime, but fails,

or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows:

1. If the offense so attempted is punishable by imprisonment in the state prison for five years, or more, or by imprisonment in the county jail, the person guilty of such attempt is punishable by imprisonment in the state prison, or in a county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction of the offense so attempted.

2. If the offense so attempted is punishable by imprisonment in the state prison for any term less than five years, the person guilty of such attempt is punishable by imprisonment in the county jail for not more than one year.

3. If the offense so attempted is punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted.

4. If the offense so attempted is punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one-half the longest term of imprisonment and one-half the largest fine which may be imposed upon a conviction for the offense so attempted. En. February 14, 1872.

Cal. Rep. Cit. 49, 393; 59, 423; 60, 72; 67, 104; 75, 571; 98, 129; 135, 269; 135, 270; 138, 160; 138, 161. Subd. 1—59, 424; 142, 14.

Attempts included in secs. 216, 217, 220-222 are not included in this section.

§ 665. **Restrictions upon the preceding sections.** The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed. En. February 14, 1872.

§ 666. **Second offense, how punished after conviction of former offense.** Every person who, having been convicted of petit larceny, or of any offense punishable by imprisonment in the state prison, commits any crime after such conviction, is punishable therefor as follows:

1. If the offense of which such person is subsequently convicted is such that, upon a first conviction, an offender would be punishable by imprisonment in the state prison for any

term exceeding five years, such person is punishable by imprisonment in the state prison not less than ten years.

2. If the subsequent offense is such that upon a first conviction, the offender would be punishable by imprisonment in the state prison for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the state prison not exceeding ten years.

3. If the subsequent conviction is for petit larceny, then the person convicted of such subsequent offense is punishable by imprisonment in the state prison not exceeding five years. En. February 14, 1872. Am'd. 1903, 107; 1905, 667.

The amendment consists in the substitution of the word "five" for "ten." At the last session of the legislature, sections 666 and 667 were changed, the former being amended, and the latter repealed. Through a mistake in copying the proposed amendment to section 666, the section, as it now stands, leaves a large class of cases unprovided for. The word "ten," on the fourth line of subdivision 1, has been changed to "five," so that where the punishment for a first conviction would be six, seven, eight, nine, or ten years, some penalty shall attach; for a second conviction for an offense punishable, say by seven, or even ten years, entails no penalty. Judge Carroll Cook called the attention of the Commissioner to the error, and requested the amendment.—Code Commissioner's Note.

Cal. Rep. Cit. 57, 559; 64, 338; 65, 299; 65, 300; 88, 120; 88, 174; 110, 43; 118, 389; 138, 163; 143, 599; 143, 634; 145, 610; 145, 612. Subd. 2—120, 272; 139, 214. Subd. 3—64, 338; 64, 341.

Previous conviction, duty of jury to find on: See post, sec. 1158.

§ 667. Second offenses, how punished after conviction of attempt to commit a state prison offense. (Repealed.) En. February 14, 1872. Rep. 1903, 108.

Cal. Rep. Cit. 47, 115; 61, 137; 61, 436; 109, 298; 110, 43; 138, 162. Subd. 2—109, 297. Subd. 3—49, 393; 73, 442.

§ 668. Foreign conviction for former offense. Every person who has been convicted in any other state, government, or country, of an offense which, if committed within this state, would be punishable by the laws of this state, by imprisonment in the state prison, is punishable for any subsequent crime committed within this state in the manner prescribed in the last two sections, and to the same extent as if such first conviction had taken place in a court of this state. En. February 14, 1872.

Cal. Rep. Cit. 61, 436.

See ante, sec. 656.

**§ 669. Second term of imprisonment, when to commence.** When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be. En. February 14, 1872.

Cal. Rep. Cit. 61, 436; 76, 519; 86, 429; 132, 348; 135, 343; 145, 186.

**§ 670. When term of imprisonment commences, etc.** The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant at the place of imprisonment, and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term. En. February 14, 1872.

Cal. Rep. Cit. 61, 436; 86, 429; 132, 347; 135, 341.

**§ 671. Imprisonment for life.** Whenever any person is declared punishable for a crime by imprisonment in the state prison for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than that prescribed. En. February 14, 1872.

Cal. Rep. Cit. 61, 436; 65, 299; 98, 129; 118, 93; 123, 416; 124, 153; 131, 316; 138, 161.

**§ 672. Fine may be added to imprisonment.** Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding two hundred dollars, in addition to the imprisonment prescribed. En. February 14, 1872.

**§ 673. Civil rights of convict suspended.** A sentence of imprisonment in a state prison for any term less than for life suspends all the civil rights of the person so sentenced,

and forfeits all public offices and all private trusts, authority, or power during such imprisonment. En. February 14, 1872.

Cal. Rep. Cit. 124, 565.

§ 674. **Civil death.** A person sentenced to imprisonment in the state prison for life is thereafter deemed civilly dead. En. February 14, 1872.

Cal Rep. Cit. 124, 565; 125, 419.

§ 675. **Limitations on two preceding sections.** The provisions of the last two preceding sections must not be construed to render the persons therein mentioned incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property. En. February 14, 1872. Am'd. 1873-4, 435.

Cal. Rep. Cit. 124, 565; 124, 566; 125, 419.

§ 676. **Person of convict protected.** The person of a convict sentenced to imprisonment in the state prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced. En. February 14, 1872.

Cal. Rep. Cit. 125, 419.

§ 677. **Forfeitures.** No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law; and all forfeitures to the people of this state, in the nature of a deodand, or where any person shall flee from justice, are abolished. En. February 14, 1872.

Cal Rep. Cit. 124, 565; 125, 420.

§ 678. **Valuation in gold coin.** Whenever in this code the character or grade of an offense, or its punishment, is made to depend upon the value of property, such value shall be estimated exclusively in United States gold coin. En. Stats. 1873-4, 435.

§ 679. **Coercion or compulsion of persons seeking employment.** Any person, or corporation within this state, or agent or officer on behalf of such person or corporation,



who shall hereafter coerce or compel any person or persons to enter into an agreement, either written or verbal, not to join or become a member of any labor organization, as a condition of such person or persons securing employment or continuing in the employment of any such person or corporation, shall be guilty of a misdemeanor. En. Stats. 1893, 176.

§ 679a. Limiting sale of convict-made goods. 1. It shall be unlawful for any person to sell, expose for sale, or offer for sale within this state, any article, or articles manufactured wholly or in part by convict or other prison labor, except articles the sale of which is specifically sanctioned by law.

2. Every person selling, exposing for sale, or offering for sale any article manufactured in this state wholly or in part by convict or other prison labor, the sale of which is not specifically sanctioned by law, shall be guilty of a misdemeanor. En. Stats. 1901, 326.

§ 680. Payment of wages to employees in a bar-room. Every person who shall pay any employee his wages, or any part thereof, while such employee is in any saloon, bar-room, or other place where intoxicating liquors are sold at retail, unless said employee is employed in such saloon, bar-room, or such other place where intoxicating liquors are sold, shall be deemed guilty of a misdemeanor. En. Stats. 1901, 660.



## PART II.

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OF CRIMINAL PROCEDURE.

(§§ 681-1570.)

(263)



## PRELIMINARY PROVISIONS.

- § 681. No person punishable but on legal conviction.
- § 682. Public offenses, how prosecuted.
- § 683. Criminal action defined.
- § 684. Parties to a criminal action.
- § 685. The party prosecuted known as defendant.
- § 686. Rights of defendant in a criminal action.
- § 687. Second prosecution for the same offense prohibited.
- § 688. No person to be a witness against himself in a criminal action, or to be unnecessarily restrained.
- § 689. No person to be convicted but upon verdict or judgment.

§ 681. No person punishable but on legal conviction. No person can be punished for a public offense, except upon a legal conviction in a court having jurisdiction thereof. En. February 14, 1872.

Cal. Rep. Cit. 68, 180.

Crim. Prac. Act, sec. 6. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Constitutional guaranty: Const. Cal., art. I, sec. 13.

Conviction of public offense, how may be had: See post, sec. 689.

§ 682. Public offenses, how prosecuted. Every public offense must be prosecuted by indictment or information, except:

1. Where proceedings are had for the removal of civil officers of the state;

2. Offenses arising in the militia when in actual service, and in the land and naval forces in time of war, or which the state may keep, with the consent of congress, in time of peace;

3. Offenses tried in justices and police courts. En. February 14, 1872. Am'd. 1880, 10.

Cal. Rep. Cit. 53, 413; 57, 561; 108, 663; 109, 450; 111, 240; 145, 37.

Crim. Prac. Act, sec. 7. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Prosecution: See Const. Cal., art. I, secs. 8, 13.

Courts-martial: See Pol. Code, secs. 2076-2084.

§ 683. **Criminal action defined.** The proceedings by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action. En. February 14, 1872.

Crim. Prac. Act, sec. 8. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 684. **Parties to a criminal action.** A criminal action is prosecuted in the name of the people of the state of California, as a party, against the person charged with the offense. En. February 14, 1872.

Cal. Rep. Cit. 61, 58; 111, 241.

Crim. Prac. Act, sec. 9. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 685. **The party prosecuted known as defendant.** The party prosecuted in a criminal action is designated in this code as the defendant. En. February 14, 1872.

Crim. Prac. Act, sec. 10. En. April, 20, 1850. Rep. 1851, 1851, 290. En. 1851, 212.

§ 686. **Rights of defendant in a criminal action.** In a criminal action the defendant is entitled:

1. To a speedy and public trial.
2. To be allowed counsel as in civil actions, or to appear and defend in person and with counsel.
3. To produce witnesses on his behalf, and to be confronted with the witnesses against him, in the presence of the court, except that where the charge has been preliminarily examined before a committing magistrate, and the testimony taken down by question and answer in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness; or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally in the

like manner in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness, the deposition of such witness may be read, upon its being satisfactorily shown to the court that he is dead or insane, or cannot with due diligence be found within the state. En. February 14, 1872.

Cal. Rep. Cit. 50, 96; 54, 577; 55, 464; 57, 568; 61, 477; 64, 86; 66, 102; 66, 676; 66, 677; 73, 207; 85, 427; 99, 233; 100, 5; 105, 656; 106, 650; 108, 444; 111, 88; 116, 254; 138, 578; 143, 380; 143, 382; 143, 386; 143, 576; 143, 577; 143, 578. Subd. 3—98, 131; 98, 132; 116, 251; 121, 498; 126, 381; 132, 263.

Crim. Prac. Act, sec. 11. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See Const. Cal., art. I, sec. 13.

Depositions as evidence: Post, secs. 869, 1345, 1362.

§ 687. **Second prosecution for the same offense prohibited.** No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted. En. February 14, 1872.

Cal. Rep. Cit. 79, 430; 99, 231; 114, 57; 132, 501; 138, 484; 138, 485; 146, 315.

Crim. Prac. Act, sec. 12. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See Const. Cal., art. I, sec. 13; U. S. Const. Amend. 5.

Dismissal no bar: See sec. 999.

§ 688. **No person to be a witness against himself in a Criminal action, or to be unnecessarily restrained.** No person can be compelled, in a criminal action, to be a witness against himself; nor can a person charged with a public offense, be subjected, before conviction, to any more re-

straint than is necessary for his detention to answer the charge. En. February 14, 1872.

Cal. Rep. Cit. 64, 340; 73, 443.

Crim. Prac. Act, sec. 13. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 42, 167; 42, 169; 48, 23.

§ 689. **No person to be convicted but upon verdict or judgment.** No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon judgment against him upon a demurrer in the case mentioned in section one thousand and eleven, or upon a judgment of a court, a jury having been waived, in a criminal case not amounting to felony. En. February 14, 1872. Am'd. 1880, 4.

Cal. Rep. Cit. 64, 341; 66, 677; 68, 180; 68, 181; 68, 183; 100, 5.

Crim. Prac. Act, sec. 14. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 158.

Cal. Rep. Cit. 4, 403; 14, 145.

## TITLE I.

### OF THE PREVENTION OF PUBLIC OFFENSES.

Chapter I. Of Lawful Resistance, §§ 692-694.

II. Of the Intervention of the Officers of Justice, §§ 697, 698.

III. Security to Keep the Peace, §§ 701-714.

IV. Police in Cities and Towns, and Their Attendance at Exposed Places, §§ 719, 720.

V. Suppression of Riots, §§ 723-734.

## CHAPTER I.

### OF LAWFUL RESISTANCE.

§ 692. Lawful resistance, by whom made.

§ 693. By the party, in what cases and to what extent.

§ 694. By other parties, in what cases.

§ 692. **Lawful resistance, by whom made.** Lawful resistance to the commission of a public offense may be made:

1. By the party about to be injured;

2. By other parties. En. February 14, 1872.

Crim. Prac. Act, sec. 15. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Personal rights: See Civ. Code, secs. 43-50.

§ 693. **By the party, in what cases and to what extent.** Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person, or his family, or some member thereof.

2. To prevent an illegal attempt by force to take or injure property in his lawful possession. En. February 14, 1872.

Crim. Prac. Act, sec. 16. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 694. **By other parties, in what cases.** Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense. En. February 14, 1872.

Crim. Prac. Act, sec. 17. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## CHAPTER II.

### OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

§ 697. Intervention of officers, in what cases.

§ 698. Persons acting in their aid justified.

§ 697. **Intervention of officers, in what cases.** Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace;

2. By forming a police in cities and towns, and by requiring their attendance in exposed places;

3. By suppressing riots. En. February 14, 1872.

Crim. Prac. Act, sec. 18. En. April 20, 1850. Rep. 1851, 280. En. 1851, 212.

Subd. 1: See post, secs. 701-714.

Subd. 2. Police force: See secs. 719, 720. Officers authorized to preserve peace: Post, sec. 720.

Subd. 3: See post, secs. 723-734.

§ 698. Persons acting in their aid justified. When the officers of justice are authorized to act in the prevention of public offenses, other persons, who, by their command, act in their aid, are justified in so doing. En. February 14, 1872.

Crim. Prac. Act, sec. 19. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

### CHAPTER III.

#### SECURITY TO KEEP THE PEACE.

- § 701. Information of threatened offense.
- § 702. Examination of complainant and witnesses.
- § 703. Warrant of arrest.
- § 704. Proceedings on charges being controverted.
- § 705. Person complained of, when to be discharged.
- § 706. Security to keep the peace, when required.
- § 707. Effect of giving or refusing to give security.
- § 708. Person committed for not giving security.
- § 709. Undertaking to be filed in clerk's office.
- § 710. Security required for assault committed in court.
- § 711. Undertaking, when broken.
- § 712. Undertaking, when and how to be prosecuted.
- § 713. Evidence of breach.
- § 714. Security for the peace.

§ 701. Information of threatened offense. An information may be laid before any of the magistrates mentioned in section eight hundred and eight, that a person has threatened to commit an offense against the person or property of another. En. February 14, 1872.

Cal. Rep. Cit. 123, 29; 123, 32.

Crim. Prac. Act, sec. 20. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 158.

§ 702. Examination of complainant and witnesses. When the information is laid before such magistrate, he must ex-



amine on oath the informer, and any witness he may produce, and must take their depositions in writing, and cause them to be subscribed by the parties making them. En. February 14, 1872.

Cal. Rep. Cit. 123, 29.

Crim. Prac. Act, sec. 21. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 703. **Warrant of arrest.** If it appears from the depositions that there is just reason to fear the commission of the offense threatened, by the person so informed against, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, marshal, or policeman in the state, reciting the substance of the information, and commanding the officer forthwith to arrest the person informed of and bring him before the magistrate. En. February 14, 1872.

Cal. Rep. Cit. 123, 29.

Crim. Prac. Act, sec. 22. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 704. **Proceedings on charges being controverted.** When the person informed against is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses. En. February 14, 1872.

Cal. Rep. Cit. 123, 29.

Crim. Prac. Act, sec. 23. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 705. **Person complained of, when to be discharged.** If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged. En. February 14, 1872.

Cal. Rep. Cit. 123, 29.

Crim. Prac. Act, sec. 24. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 706. **Security to keep the peace, when required.** If, however, there is just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace toward the people of this state, and particularly toward the informer. The undertaking is valid and binding for six months, and may, upon the renewal of the information, be extended for a longer period, or a new undertaking may be required. En. February 14, 1872.

Cal. Rep. Cit. 123, 29.

Crim. Prac. Act, sec. 25. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 707. **Effect of giving or refusing to give security.** If the undertaking required by the last section is given, the party informed of must be discharged. If he does not give it, the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same. En. February 14, 1872.

Cal. Rep. Cit. 123, 29.

Crim. Prac. Act, sec. 26. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 708. **Person committed for not giving security.** If the person complained of is committed for not giving the undertaking required, he may be discharged by any magistrate, upon giving the same. En. February 14, 1872.

Cal. Rep. Cit. 123, 29.

Crim. Prac. Act, sec. 27. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 709. **Undertaking to be filed in clerk's office.** The undertaking must be filed by the magistrate, in the office of the clerk of the county. En. February 14, 1872.

Cal. Rep. Cit. 123, 29.

Crim. Prac. Act, sec. 28. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 710. **Security required for assault committed in court.** A person who, in the presence of a court or magistrate, assaults or threatens to assault another, or to commit an offense against his person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security, as in this chapter provided, and if he refuse to do so, may be committed as provided in section seven hundred and seven. En. February 14, 1872.

Cal. Rep. Cit. 123, 29.

Crim. Prac. Act, sec. 29. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 8, 391.

§ 711. **Undertaking, when broken.** Upon the conviction of the person informed against of a breach of the peace, the undertaking is broken. En. February 14, 1872.

Cal. Rep. Cit. 123, 29.

Crim. Prac. Act, sec. 30. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 8, 391.

§ 712. **Undertaking, when and how to be prosecuted.** Upon the district attorney's producing evidence of such conviction to the superior court of the county, the court must order the undertaking to be prosecuted, and the district attorney must thereupon commence an action upon it in the name of the people of this state. En. February 14, 1872. Am'd. 1880, 32.

Cal. Rep. Cit. 123, 29.

Crim. Prac. Act, sec. 31. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 158.

Cal. Rep. Cit. 8, 391.

§ 713. **Evidence of breach.** In the action, the offense stated in the record of conviction must be alleged as a breach of the undertaking, and such record is conclusive evidence of the breach. En. February 14, 1872.

Cal. Rep. Cit. 123, 29.

Crim. Prac. Act, sec. 32. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 714. **Security for the peace.** Security to keep the peace, or be of good behavior, cannot be required except as prescribed in this chapter. En. February 14, 1872.

Cal. Rep. Cit. 123, 29; 123, 32.

Crim. Prac. Act, sec. 33. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## CHAPTER IV.

### POLICE IN CITIES AND TOWNS, AND THEIR ATTENDANCE AT EXPOSED PLACES.

§ 719. Organization and regulation of the police.

§ 720. Force to preserve the peace at public meetings.

§ 719. **Organization and regulation of the police.** The organization and regulation of the police, in the cities and towns of this state, is governed by special laws. En. February 14, 1872.

Crim. Prac. Act, sec. 34. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Police insurance and pension bill: See post, Appendix, title Police.

Compensation of police: See post, Appendix, title Police.

Increase of police force: See post, Appendix, title Police.

Vacation for police: See post, Appendix, title Police.

**§ 720. Force to preserve the peace at public meetings.** The mayor or other officer having the direction of the police of a city or town must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended. En. February 14, 1872.

Crim. Prac. Act, sec. 35. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See ante, sec. 701.

Suppression of riots. See post, secs. 723 et seq.

## CHAPTER V.

### SUPPRESSION OF RIOTS.

- § 723. Power of sheriff in overcoming resistance.
- § 724. Officer to certify to court the name of registers, etc.
- § 725. Governor to order out military to aid in executing process. (Repealed.)
- § 726. Magistrates and officers to command rioters to disperse.
- § 727. To arrest rioters if they do not disperse.
- § 728. Officers who may order out the military. (Repealed.)
- § 729. Commanding officer and troops to obey the order. (Repealed.)
- § 730. Armed force to obey orders of whom. (Repealed.)
- § 731. Conduct of the troops. (Repealed.)
- § 732. Governor may declare a county in a state of insurrection. (Repealed.)
- § 733. May revoke the proclamation. (Repealed.)
- § 734. Right to parade with arms.

**§ 723. Power of sheriff in overcoming resistance.** When a sheriff or other public officer authorized to execute process finds, or has reason to apprehend that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the persons resisting, their aiders and abettors. En. February 14, 1872.

Crim. Prac. Act, sec. 36. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Peace officers: See post, sec. 877. See ante, sec. 697, subd. 2.

Jurisdiction of police court: See Pol Code, sec. 4426.

§ 724. **Officer to certify to court the name of registers, etc.** The officer must certify to the court from which the process issued, the names of the persons resisting, and their aiders and abettors, to the end that they may be proceeded against for their contempt of court. En. February 14, 1872.

Crim. Prac. Act, sec. 37. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 725. **Governor to order out military to aid in executing process.** En. February 14, 1872. Repealed 1905, 411.

Crim. Prac. Act, sec. 39. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 726. **Magistrates and officers to command rioters to disperse.** Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies, the officials governing the town or city, or the justices of the peace and constables thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the state, immediately to disperse. En. February 14, 1872.

Crim. Prac. Act, sec. 40. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Suppressing riots: See ante, sec. 697, subd. 3.

§ 727. **To arrest rioters if they do not disperse.** If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county. En. February 14, 1872.

Crim. Prac. Act, sec. 41. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 42. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See ante, sec. 723.

§ 728. **Officers who may order out the military.** En. February 14, 1872. Am'd. 1880, 32. Rep. 1905, 411.

Crim. Prac. Act, sec. 46. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Governor may call out militia to execute laws, suppress insurrection and repel invasion: Const. Cal., art. VIII, sec. 1.

§ 729. **Commanding officer and troops to obey the order.** En. February 14, 1872. Am'd. 1880, 32. Rep. 1905, 412.

Crim. Prac. Act, sec. 47. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 730. **Armed force to obey order of whom.** En. February 14, 1872. Am'd. 1880, 32. Rep. 1905, 412.

§ 731. **Conduct of the troops.** En. February 14, 1872. Am'd. 1895, 193. Rep. 1905, 412.

§ 732. **Governor may declare a county in a state of insurrection.** En. February 14, 1872. Am'd. 1880, 32. Rep. 1905, 412.

Crim. Prac. Act, sec. 48. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Governor is commander-in-chief: See Const. Cal., art. V, sec. 5.

§ 733. **May revoke the proclamation.** En. February 14, 1872. Rep. 1905, 412.

Crim. Prac. Act, sec. 49. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 734. **Right to parade with arms.** It shall not be lawful for any body of men whatever, other than the regular organized National Guard of this state, and the troops of the United States, to associate themselves together as a military company or organization, to drill or parade with arms in any city or town of this state, without the license of the governor thereof, which license may at any time be revoked; and provided further, that students in educational institutions where military science is a part of the course of instruction may, with the consent of the governor, drill and parade with arms in public under the superintendence of their instructor; provided, that nothing herein contained shall be construed so as to prevent benevolent or social organizations from wearing swords. And any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor and subject to arrest and punishment therefor. En. Stats. 1895, 193.



## TITLE II.

### OF JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS BY IMPEACHMENT OR OTHERWISE.

#### Chapter I. Of Impeachments, §§ 737-753.

#### II. Of the Removal of Civil Officers Otherwise than by Impeachment, §§ 758-772.

### CHAPTER I.

#### OF IMPEACHMENTS.

- § 737. Officers liable to impeachment.
- § 738. Articles, how prepared. Trial by senate.
- § 739. Articles of impeachment.
- § 740. Time of hearing. Service on defendant.
- § 741. Service, how made.
- § 742. Proceedings on failure to appear.
- § 743. Defendant, after appearance, may answer or demur.
- § 744. If demurrer is overruled, defendant must answer.
- § 745. Senate to be sworn.
- § 746. Two thirds necessary to a conviction.
- § 747. Judgment on conviction, how pronounced.
- § 748. The same.
- § 749. Nature of the judgment.
- § 750. Effect of judgment of suspension.
- § 751. Impeachment disqualifies until acquittal. Vacancy, how filled.
- § 752. Presiding officer when lieutenant-governor is impeached.
- § 753. Impeachment not a bar to indictment.

§ 737. **Officers liable to impeachment.** The governor, lieutenant-governor, secretary of state, controller, treasurer, attorney-general, surveyor-general, chief justice, associate justices of the supreme court, and judges of the superior courts, are liable to impeachment for any misdemeanor in office. En. February 14, 1872. Am'd. 1880, 3.

Crim. Prac. Act, sec. 51. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**Impeachment.**—This section is taken from the first portion of section 18 of article IV of the state constitution.

See note to next section as to form of articles of impeachment, and the rules generally adopted in such proceedings.

§ 738. **Articles, how prepared. Trial by senate.** All impeachments must be by resolution adopted, originated in, and conducted by managers elected by the assembly, who must prepare articles of impeachment, present them at the bar of the senate, and prosecute the same. The trial must be had before the senate, sitting as a court of impeachment. En. February 14, 1872.

Cal. Rep. Cit. 88, 124.

Crim. Prac. Act, sec. 52. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**Impeachment.** This section is also taken from articles IV, section 17, of the state constitution. In this respect our constitution is similar to the federal constitution: Const. U. S., art. I, sec. 3. The method of procedure generally adopted in preparing articles of impeachment in the assembly is shown by the course adopted in the impeachment of G. W. Whitman, controller, and Henry Bates, treasurer, at the eighth session of the California legislature, 1856-7: See journals of assembly of that session, pp. 253, 289, 307, 318. See, as to form of articles of impeachment, Id. 375; Senate Journal, pp. 297, 303; Proceedings on Trial of William Hardy, by Sumner & Cutter, p. 14; Proceedings in the trial of Andrew Johnson, p. 1.

§ 739. **Articles of impeachment.** When an officer is impeached by the assembly for a misdemeanor in office, the articles of impeachment must be delivered to the president of the senate. En. February 14, 1872.

Crim. Prac. Act, sec. 53. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 740. **Time of hearing. Service on defendant.** The senate must assign a day for the hearing of the impeach-

ment, and inform the assembly thereof. The president of the senate must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than ten days before the day fixed for the hearing. En. February 14, 1872.

Crim. Prac. Act, sec. 54. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 741. **Service, how made.** The service must be made upon the defendant personally, or if he cannot, upon diligent inquiry, be found within the state, the senate, upon proof of that fact, may order publication to be made, in such manner as it may deem proper, of a notice requiring him to appear at a specified time and place and answer the articles of impeachment. En. February 14, 1872.

Crim. Prac. Act, sec. 55. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Sergeant-at-arms to execute process: See Pol. Code, sec. 259.

§ 742. **Proceedings on failure to appear.** If the defendant does not appear, the senate, upon proof of service or publication, as provided in the two last sections, may, of its own motion or for cause shown, assign another day for hearing the impeachment, or may proceed, in the absence of the defendant, to trial and judgment. En. February 14, 1872.

Crim. Prac. Act, sec. 56. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 743. **Defendant, after appearance, may answer or demur.** When the defendant appears, he may in writing object to the sufficiency of the articles of impeachment, or he may answer the same by an oral plea of not guilty, which plea must be entered upon the journal, and puts in issue every material allegation of the articles of impeachment. En. February 14, 1872.

Crim. Prac. Act, sec. 57. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 744. **If demurrer is overruled, defendant must answer.** If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the senate who heard the argument, the defendant must be ordered forthwith to answer the articles of impeachment. If he then pleads guilty, or refuses to plead, the senate must render judgment of conviction against him. If he plead not guilty, the senate must, at such time as it may appoint, proceed to try the impeachment. En. February 14, 1872.

Crim. Prac. Act, sec. 50. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 59. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 745. **Senate to be sworn.** At the time and place appointed, and before the senate proceeds to act on the impeachment, the secretary must administer to the president of the senate, and the president of the senate to each of the members of the senate then present, an oath truly and impartially to hear, try, and determine the impeachment; and no member of the senate can act or vote upon the impeachment, or upon any question arising thereon, without having taken such oath. En. February 14, 1872.

Crim. Prac. Act, sec. 60. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 746. **Two thirds necessary to a conviction.** The defendant cannot be convicted on impeachment without the concurrence of two thirds of the members elected, voting by ayes and noes, and if two thirds of the members elected do not concur in a conviction, he must be acquitted. En. February 14, 1872. Am'd. 1880, 3.

Crim. Prac. Act, sec. 62. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 747. **Judgment on conviction, how pronounced.** After conviction the senate must, at such time as it may appoint, pronounce judgment, in the form of a resolution entered upon the journals of the senate. En. February 14, 1872.

Crim. Prac. Act, sec. 63. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 748. **The same.** On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the senate. En. February 14, 1872.

Crim. Prac. Act, sec. 64. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 749. **Nature of the judgment.** The judgment may be that the defendant be suspended, or that he be removed from office and disqualified to hold any office of honor, trust, or profit under the state. En. February 14, 1872. Am'd. 1880, 3.

Crim. Prac. Act, sec. 65. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See Const. Cal., art. IV, sec. 18.

The original section had "and removed from office" after the word "suspended."

§ 750. **Effect of judgment of suspension.** If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office. En. February 14, 1872.

Crim. Prac. Act, sec. 66. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 751. **Impeachment disqualifies until acquittal. Vacancy, how filled.** Whenever articles of impeachment against any officer subject to impeachment are presented

to the senate, such officer is temporarily suspended from his office, and cannot act in his official capacity until he is acquitted. Upon such suspension of any officer other than the governor, his office must at once be temporarily filled by an appointment made by the governor, with the advice and consent of the senate, until the acquittal of the party impeached; or, in case of his removal, until the vacancy is filled at the next election, as required by law. En. February 14, 1872.

Crim. Prac. Act, sec. 67. En. April 20, 1850. Rep. 1851, 390. En. 1851, 212. Am'd. 1857, 17.

§ 752. **Presiding officer when lieutenant-governor is impeached.** If the lieutenant-governor is impeached, notice of the impeachment must be immediately given to the senate by the assembly, that another president may be chosen. En. February 14, 1872.

Crim. Prac. Act, sec. 68. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 753. **Impeachment not a bar to indictment.** If the offense for which the defendant is convicted on impeachment is also the subject of an indictment or information, the indictment or information is not barred thereby. En. February 14, 1872. Am'd. 1880, 3.

Crim. Prac. Act, sec. 69. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## CHAPTER II.

## OF THE REMOVAL OF CIVIL OFFICERS OTHERWISE THAN BY IMPEACHMENT.

- § 758. Accusation to be presented by the grand jury.
- § 759. Form of accusation.
- § 760. To be transmitted to the district attorney, and copy served.
- § 761. Proceedings if defendant does not appear.
- § 762. Defendant may object to or deny the accusation.
- § 763. Form of objection.
- § 764. Manner of denial.
- § 765. If objections overruled, defendant must answer.
- § 766. Proceedings on plea of guilty, refusal to answer, etc.
- § 767. Trial by jury.
- § 768. State and defendant entitled to process for witnesses.
- § 769. Judgment upon conviction, and its form.
- § 770. Appeal, how taken. Defendant to be suspended and vacancy filled.
- § 771. Proceedings for the removal of a district attorney.
- § 772. Removal of public officers summary proceedings.

§ 758. **Accusation to be presented by the grand jury.**  
 An accusation in writing against any district, county, township, or municipal officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed.  
 En. February 14, 1872.

Cal. Rep. Cit. 75, 151; 85, 591; 97, 383; 107, 289; 114, 553; 119, 232; 145, 36; 145, 37; 145, 38; 147, 529; 147, 530; 147, 532; 147, 534.

Crim. Prac. Act, sec. 70. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Removal of civil officers otherwise than by impeachment.—Under this section, which is taken from article IV, section 18, of the state constitution, all officers, other than those named in section 737 as liable to impeachment, are liable to be tried for misconduct in office, and if found guilty, removed therefrom. The constitutional provision just referred to reads: “All other civil officers shall be tried for misdemeanor in office in such manner as the legislature may provide.”

**§ 759. Form of accusation.** The accusation must state the offense charged, in ordinary and concise language, and without repetition. En. February 14, 1872.

Crim. Prac. Act, sec. 71. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 760. To be transmitted to the district attorney, and copy served.** The accusation must be delivered by the foreman of the grand jury to the district attorney of the county, except when he is the officer accused, who must cause a copy thereof to be served upon the defendant, and require, by notice in writing of not less than ten days, that he appear before the superior court of the county, at a time mentioned in the notice, and answer the accusation. The original accusation must then be filed with the clerk of the court. En. February 14, 1872. Am'd. 1880, 32.

Crim. Prac. Act, sec. 72. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 761. Proceedings if defendant does not appear.** The defendant must appear at the time appointed in the notice and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence. En. February 14, 1872.

Crim. Prac. Act, sec. 73. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 762. Defendant may object to or deny the accusation.** The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same. En. February 14, 1872.

Cal. Rep. Cit. 145, 36; 145, 38.

Crim. Prac. Act, sec. 74. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.



§ 763. **Form of objection.** If he objects to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection. En. February 14, 1872.

Cal. Rep. Cit. 145, 36.

Crim. Prac. Act, sec. 75. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 764. **Manner of denial.** If he denies the truth of the accusation, the denial may be oral and without oath, and must be entered upon the minutes. En. February 14, 1872.

Crim. Prac. Act, sec. 76. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 765. **If objections overruled, defendant must answer.** If an objection to the sufficiency of the accusation is not sustained, the defendant must answer thereto forthwith. En. February 14, 1872.

Crim. Prac. Act, sec. 77. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 766. **Proceedings on plea of guilty, refusal to answer, etc.** If the defendant pleads guilty, or refuses to answer the accusation, the court must render judgment of conviction against him. If he denies the matter charged, the court must immediately, or at such time as it may appoint, proceed to try the accusation. En. February 14, 1872.

Crim. Prac. Act, sec. 78. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 767. **Trial by jury.** The trial must be by a jury, and conducted in all respects in the same manner as the trial of an indictment for a misdemeanor. En. February 14, 1872.

Crim. Prac. Act, sec. 79. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 41, 652.

§ 768. **State and defendant entitled to process for witnesses.** The district attorney and the defendant are respectively entitled to such process as may be necessary to enforce the attendance of witnesses, as upon a trial of an indictment. En. February 14, 1872.

Crim. Prac. Act, sec. 80. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 769. **Judgment upon conviction, and its form.** Upon a conviction, the court must, at such time as it may appoint, pronounce judgment that the defendant be removed from office; but, to warrant a removal, the judgment must be entered upon the minutes, and the causes of removal must be assigned therein. En. February 14, 1872.

Crim. Prac. Act, sec. 81. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 158.

§ 770. **Appeal, how taken. Defendant to be suspended and vacancy filled.** From a judgment or decree of removal from office under any provision of this chapter, an appeal may be taken to the supreme court in the same manner as from a judgment in a civil action but until such judgment is reversed, the defendant is suspended from office after thirty days from the entry of the judgment, unless within such thirty days there shall be filed in the office of the clerk of the court in which the conviction was had, a certificate of a judge of the superior court that in his opinion there is probable cause for the appeal. If a bill of exceptions is not settled in time to be used upon an application for such a certificate or within twenty days after such judgment is entered, the error relied upon may be presented to such judge in any manner satisfactory to such judge. If no such certificate be filed within thirty days the office must pending the appeal be filled as in case of a vacancy. Appeals taken under this section shall be entitled in the appellate court to priority in hearing over all cases except such as have been advanced upon its calendar by special

order of such appellate court. En. February 14, 1872. Am'd. 1905, 251.

Cal. Rep. Cit. 83, 47; 83, 48; 96, 157; 107, 289.

Crim. Prac. Act, sec. 82. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 771. **Proceedings for the removal of a district attorney.** The same proceedings may be had on like ground for the removal of a district attorney, except that the accusation must be delivered by the foreman of the grand jury to the clerk, and by him to a judge of the superior court of the county, who must thereupon appoint some one to act as prosecuting officer in the matter, or place the accusation in the hands of the district attorney of an adjoining county, and require him to conduct the proceedings. En. February 14, 1872. Am'd. 1880, 32.

Crim. Prac. Act, sec. 83. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 772. **Removal of public officers by summary proceedings.** When an accusation in writing, verified by the oath of any person, is presented to a superior court, alleging that any officer within the jurisdiction of the court has been guilty of charging and collecting illegal fees for services rendered, or to be rendered, in his office, or has refused or neglected to perform the official duties pertaining to his office, the court must cite the party charged to appear before the court at a time not more than ten nor less than five days from the time the accusation was presented, and on that day, or some other subsequent day not more than twenty days from that on which the accusation was presented, must proceed to hear, in a summary manner, the accusation, and evidence offered in support of the same, and the answer and evidence offered by the party accused; and if, on such hearing, it appears that the charge is sustained, the court must enter a decree that the party accused be deprived of his office, and must enter a judg-

ment for five hundred dollars in favor of the informer, and such costs as are allowed in civil cases. En. February 14, 1872. Am'd. 1880, 33.

Cal. Rep. Cit. 50, 646; 52, 623; 56, 360; 57, 354; 63, 325; 75, 151; 83, 47; 83, 48; 85, 643; 85, 644; 85, 645; 85, 647; 97, 383; 98, 588; 98, 589; 98, 590; 107, 287; 107, 288; 107, 289; 108, 662; 110, 656; 111, 239; 111, 240; 111, 242; 114, 476; 114, 552; 119, 232; 122, 293; 130, 184; 130, 186; 145, 37; 145, 45; 145, 473; 147, 27; 147, 528; 147, 529; 147, 532.

### TITLE III.

#### OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT, TO THE COMMITMENT, INCLUSIVE.

Chapter I. Of the Local Jurisdiction of Public Offenses, §§ 777-795.

II. Of the Time of Commencing Criminal Actions, §§ 799-803.

III. The Information, §§ 806-809.

IV. The Warrant of Arrest, §§ 811-829.

V. Arrest, by Whom and How Made, §§ 834-851.

VI. Retaking After an Escape or Rescue, §§ 854, 855.

VII. Examination of the Case and Discharge of Defendant, or Holding Him to Answer, §§ 858-883.

### CHAPTER I.

#### OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

§ 777. Jurisdiction of offenses committed in this state.

§ 778. Offenses commenced without, but consummated within this state.

§ 778a. Performance of act in this state culminating in a crime in another state.

§ 778b. Non-resident aiding in a crime in this state.

§ 779. When an inhabitant of this state is concerned in a duel out of the same, and a party wounded dies therein.

- § 780. Leaving the state to evade the statute against dueling.
- § 781. Offense committed partly in one county and partly in another.
- § 782. Committed on the boundary, etc., of two or more counties.
- § 783. Jurisdiction of an offense on board a vessel or car.
- § 784. Jurisdiction for kidnaping or abduction.
- § 785. Jurisdiction of an indictment for bigamy or incest.
- § 786. Property feloniously taken in one county and brought into another.
- § 787. Jurisdiction for escaping from prison.
- § 788. Jurisdiction for treason committed out of the state.
- § 789. Jurisdiction for stealing, etc., property, out of state, and brought therein.
- § 790. Jurisdiction for murder, etc., where the injury was inflicted in one county, and the party dies out of that county.
- § 791. Of an indictment against an accessory.
- § 792. Of principals who are not present, etc., at commission of the principal offense.
- § 793. Conviction or acquittal in another state a bar, where the jurisdiction is concurrent.
- § 794. Conviction or acquittal in another county a bar, where the jurisdiction is concurrent.
- § 795. Jurisdiction of prize-fight.

### § 777. Jurisdiction of offenses committed in this state.

Every person is liable to punishment by the laws of this state, for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States; and except as herein otherwise provided, the jurisdiction of every public offense is in the county wherein it is committed. En. February 14, 1872. Am'd. 1905, 692.

The amendment declares that the jurisdiction of any public offense not otherwise specially provided for is within the county where it was committed. Although this has always been understood to be the law, the Code seems to contain no express declaration upon the subject. The change consists in the addition, after the words "United States," of the words "and, except as herein otherwise provided, the jurisdiction of any public offense is in the county wherein it is committed."—Code Commissioner's Note.

Crim. Prac. Act, sec. 84. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Jurisdiction of police court: See Pol. Code, sec. 4426.

§ 778. Offenses commenced without, but consummated within this state. When the commission of a public offense, commenced without the state, is consummated within its boundaries, the defendant is liable to punishment

therefor in this state, though he was out of the state at the time of the commission of the offense charged. If he consummated it in this state, through the intervention of an innocent or guilty agent, or any other means proceeding directly from himself, in such case the jurisdiction is in the county in which the offense is consummated. En. February 14, 1872.

Crim. Prac. Act, sec. 85. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 778a. Performance of an act in this state culminating in a crime in another state. Whenever a person, with intent to commit a crime, does any act within this state in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this state, such person is punishable for such crime in this state in the same manner as if the same had been committed entirely within this state. En. Stats. 1905, 692.

The section is designed to provide for the punishment of persons who in this state do an act culminating in the commission of a crime in another state.—Code Commissioner's Note.

§ 778b. Non-resident aiding in a crime in this state. Every person who, being out of this state, causes, aids, advises, or encourages any person to commit a crime within this state, and is afterwards found within this state, is punishable in the same manner as if he had been within this state when he caused, aided, advised, or encouraged the commission of such crime. En. Stats. 1905, 692.

The object of this section is to provide for the punishment of persons who, being out of the state, encourage the commission of crimes within this state, and are afterwards found within the state.—Code Commissioner's Note.

§ 779. When an inhabitant of this state is concerned in a duel out of the same, and a party wounded dies therein. When an inhabitant or resident of this state, by previous appointment or engagement, fights a duel or is concerned as second therein, out of the jurisdiction of this state, and in the duel a wound is inflicted upon a person,

whereof he dies in this state, the jurisdiction of the offense is in the county where the death happens. En. February 14, 1872.

Crim. Prac. Act, sec. 86. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 780. **Leaving the state to evade the statute against dueling.** When an inhabitant of this state leaves the same for the purpose of evading the operation of the provisions of the code relating to dueling and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county of which the offender was an inhabitant when the offense was committed. En. February 14, 1872.

§ 781. **Offense committed partly in one county and partly in another.** When a public offense is committed in part in one county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county. En. February 14, 1872.

Cal. Rep. Cit. 51, 379.

Crim. Prac. Act, sec. 87. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 22, 183.

§ 782. **Committed on the boundary, etc., of two or more counties.** When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county. En. February 14, 1872.

Cal. Rep. Cit. 55, 233; 59, 459.

Crim. Prac. Act, sec. 88. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 783. **Jurisdiction of an offense on board a vessel or car.** When an offense is committed in this state, on board a vessel navigating a river, bay, slough, lake, or canal,



or lying therein, in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage terminates; and when the offense is committed in this state, on a railroad train or car prosecuting its trip, the jurisdiction is in any county through which the train or car passes in the course of her trip, or in the county where the trip terminates. En. February 14, 1872.\* Am'd. 1875-6, 116.

Cal. Rep. Cit. 103, 510; 133, 624; 138, 146.

Crim. Prac. Act, sec. 89. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 7, 398.

§ 784. **Jurisdiction for kidnaping or abduction.** The jurisdiction of a criminal action:

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnaping him, with intent, against his will, to cause him to be secretly confined or imprisoned in this state, or to be sent out of the state, or from one county to another, or to be sold as a slave, or in any way held to service;

2. For decoying, taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having the lawful charge of the child;

3. For inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of eighteen years, for the purpose of prostitution; or,

4. For taking away any female, under the age of sixteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of concubinage or prostitution;

Is in the county in which the offense is committed, or out of which the person upon whom the offense was committed has, in the commission of the offense, been taken, or in which an act was done by the defendant in instigating, procuring,



promoting, or aiding in the commission of the offense, or in abetting the parties concerned therein. En. February 14, 1872. Am'd. 1880, 11; 1905, 692.

The change consists in the substitution of the word "eighteen" for "twenty-five," after "of"; in the substitution of the word "eighteen" for "sixteen," after "of"; and in the insertion of the word "brought" in place of "taken."—Code Commissioner's Note.

Cal. Rep. Cit. 141, 546; 141, 547.

Crim. Prac. Act, sec. 90. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Enticing away children: See ante, sec. 278.

Enticing away unmarried female: See ante, secs. 266, 267.

**§ 785. Jurisdiction of an indictment for bigamy or incest.** When the offense, either of bigamy or incest, is committed in one county and the defendant is apprehended in another, the jurisdiction is in either county. En. February 14, 1872.

Crim. Prac. Act, sec. 91. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 786. Property feloniously taken in one county and brought into another.** When property taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offense is in either county. But if at any time before the conviction of the defendant in the latter, he is indicted in the former county, the sheriff of the latter county must, upon demand, deliver him to the sheriff of the former. En. February 14, 1872.

Cal. Rep. Cit. 74, 95; 91, 27; 106, 640; 134, 386.

Crim. Prac. Act, sec. 92. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 29, 422; 40, 653.

Bringing stolen property into the state: See ante, sec. 27, subd. 2; ante, sec. 497; post, sec. 789.

§ 787. Jurisdiction for escaping from prison. The jurisdiction of a criminal action for escaping from prison is in any county of the state. En. February 14, 1872. Am'd. 1880, 11.

The words "criminal action" are here substituted for the word "indictment" in the original.

§ 788. Jurisdiction for treason committed out of the state. The jurisdiction of a criminal action for treason, when the overt act is committed out of the state, is in any county of the state. En. February 14, 1872. Am'd. 1880, 11.

Similar amendment as in last section.

§ 789. Stealing property in another state and bringing it into this state. The jurisdiction of a criminal action for stealing or embezzling, in any other state, the property of another, or receiving it knowing it to have been stolen or embezzled, and bringing the same into this state, is in any county into or through which such stolen or embezzled property has been brought. En. February 14, 1872. Am'd. 1880, 11; 1905, 693.

The change consists in the insertion of the words "or embezzling," after "stealing," and of the words "or embezzled," after the word "stolen."—Code Commissioner's Note.

Cal. Rep. Cit. 91, 27; 91, 28; 122, 74.

See ante, sec. 497.

Similar amendment as in section 787.

Crime committed by person out of state: Ante, secs. 27, subd. 2; sec. 497.

Taking stolen property from one county to another: Ante, sec. 786.

§ 790. Jurisdiction for murder, etc., where the injury was inflicted in one county, and the party dies out of that county. The jurisdiction of a criminal action for murder or manslaughter, when the injury which caused the death was inflicted in one county, and the party injured dies in another county or out of the state, is in the county where the injury was inflicted. En. February 14, 1872. Am'd. 1880, 11.

Similar amendment as in section 787.

§ 791. Of an indictment against an accessory. In the case of an accessory in the commission of a public offense, the jurisdiction is in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county. En. February 14, 1872.

Crim. Prac. Act, sec. 93. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 27, 341.

Accessories: See ante, secs. 30, 31, 32.

§ 792. Of principals who are not present, etc., at commission of the principal offense. The jurisdiction of a criminal action against a principal in the commission of a public offense, when such principal is not present at the commission of the principal offense, is in the same county it would be under this code if he were so present and aiding and abetting therein. En. February 14, 1872. Am'd. 1880, 11.

Similar amendment as in section 787.

§ 793. Conviction or acquittal in another state a bar, where the jurisdiction is concurrent. When an act charged as a public offense is within the jurisdiction of another state or country, as well as of this state, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this state. En. February 14, 1872.

Crim. Prac. Act, sec. 94. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 794. Conviction or acquittal in another county a bar where the jurisdiction is concurrent. When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment therefor in another. En. February 14, 1872.

Crim. Prac. Act, sec. 95. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 795. Jurisdiction of prize-fight. The jurisdiction of a violation of sections four hundred and twelve, four hun-

dred and thirteen, and four hundred and fourteen of the Penal Code, or a conspiracy to violate either of said sections, is in any county:

First. In which any act is done toward the commission of the offense; or,

Second. Into, out of, or through which the offender passed to commit the offense; or,

Third. Where the offender is arrested. En. Stats. 1873-4, 466.

## CHAPTER II.

### OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

§ 799. Prosecution for murder may be commenced at any time.

§ 800. Limitation of three years in all other felonies.

§ 801. Limitation of one year in misdemeanors.

§ 802. Exception when the defendant is out of the state.

§ 803. Indictment found, when presented and filed.

§ 799. Prosecution for murder may be commenced at any time. There is no limitation of time within which a prosecution for murder, the embezzlement of public moneys, and the falsification of public records must be commenced. Prosecution for murder may be commenced at any time after the death of the person killed, and for the embezzlement of public money or the falsification of public records, at any time after the discovery of the crime. En. February 14, 1872. Am'd. 1891, 192.

Crim. Prac. Act, sec. 96. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 44, 97.

§ 800. Limitation of three years in all other felonies. An indictment for any other felony than murder, the embezzlement of public money, or the falsification of public records, must be found, or an information filed, within three years after its commission. En. February 14, 1872. Am'd. 1880, 12; 1891, 193.

Cal. Rep. Cit. 85, 88.

Crim. Prac. Act, sec. 97. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 44, 97; 44, 99.

§ 801. **Limitation of one year in misdemeanors.** An indictment for any misdemeanor must be found or an information filed within one year after its commission. En. February 14, 1872. Am'd. 1880, 12.

Cal. Rep. Cit. 62, 142; 77, 359; 84, 80; 85, 87; 85, 88; 124, 361; 137, 268; 137, 269; 138, 535.

Crim. Prac. Act, sec. 98. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 802. **Exception when the defendant is out of the state.** If, when the offense is committed, the defendant is out of the state, the indictment may be found or an information filed within the term herein limited after his coming within the state, and no time during which the defendant is not an inhabitant of, or usually resident within this state, is part of the limitation. En. February 14, 1872. Am'd. 1880, 12.

Cal. Rep. Cit. 77, 359; 84, 80; 85, 80.

Crim. Prac. Act, sec. 99. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 803. **Indictment found, when presented and filed.** An indictment is found, within the meaning of this chapter, when it is presented by the grand jury in open court, and there received and filed. En. February 14, 1872.

Crim. Prac. Act, sec. 100. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

### CHAPTER III.

#### THE INFORMATION.

§ 806. Complaint defined.

§ 807. Magistrate defined.

§ 808. Who are magistrates.

§ 809. Filing information.

§ 806. **Complaint defined.** The complaint is the allegation in writing made to a court or magistrate that a person has been guilty of some designated offense. En. February 14, 1872. Am'd. 1880, 12.

Cal. Rep. Cit. 65, 615.

Crim. Prac. Act, sec. 101. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See ante, sec. 701.

§ 807. **Magistrate defined.** A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense. En. February 14, 1872.

Cal. Rep. Cit. 68, 503; 111, 661; 115, 54.

Crim. Prac. Act, sec. 102. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 808. **Who are magistrates.** The following persons are magistrates:

1. The justices of the supreme court.

2. The judges of the superior courts.

3. Justices of the peace.

4. Police magistrates in towns or cities. En. February 14, 1872. Am'd. 1880, 7.

Cal. Rep. Cit. 51, 376; 68, 503; 115, 54; 118, 78; 145, 743.

Crim. Prac. Act, sec. 103. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 809. **Filing information.** When a defendant has been examined and committed, as provided in section eight hundred and seventy-two of this code, it shall be the duty of the district attorney, within thirty days thereafter to file in the superior court of the county in which the offense is triable an information charging the defendant with such offense. The information shall be in the name of the people of the state of California, and subscribed by the district attorney, and shall be in form like an indictment for the same offense. En. Stats. 1880, 12.

Cal. Rep. Cit. 56, 234; 57, 561; 65, 108; 66, 395; 66, 664; 67, 232; 67, 234; 68, 503; 68, 579; 85, 88; 91, 648; 108, 663; 109, 450; 113, 284; 117, 656; 142, 13; 142, 598; 143, 221.

**810 (new).** If the information or other pleading in any criminal action now pending, or which may be hereafter commenced, has heretofore been lost or destroyed, or shall hereafter be lost or destroyed, the court must upon the application of the attorney general, district attorney, or the defendant, order a copy of the information or other pleading to be filed and substituted for the original, and when filed and substituted, as provided in this section, it shall have the same force and effect as if it were the original information or other pleading. (In effect March 22, 1907.)





## CHAPTER IV.

## THE WARRANT OF ARREST.

- § 811. Examination of the prosecutor and his witnesses upon the information.
- § 812. Depositions, what to contain.
- § 813. When warrant may issue.
- § 814. Form of warrant.
- § 815. Name or description of the defendant in the warrant, and statement of the offense.
- § 816. Warrant to be directed to and executed by peace officer.
- § 817. Who are peace officers.
- § 818. To what peace officers warrants are to be directed.
- § 819. Same; and when and how executed in another county.
- § 820. Indorsement on warrant, for service in another county.
- § 821. Defendant to be taken before the magistrate issuing the warrant, etc.
- § 822. Defendant arrested for misdemeanor in another county, to be admitted to bail.
- § 823. Proceedings on taking bail from the defendant in such cases.
- § 824. When bail is not given. When magistrate who issued warrant cannot act.
- § 825. No delay in taking defendant before magistrate.
- § 826. Proceedings where defendant is taken before another magistrate.
- § 827. Proceedings for offenses triable in another county.
- § 828. Duty of officer.
- § 829. Admission to bail.

§ 811. Examination of the prosecutor and his witnesses upon the information. When an information is laid before a magistrate of the commission of a public offense, triable within the county, he must examine on oath the informant or prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them. En. February 14, 1872.

Cal. Rep. Cit. 54, 103; 74, 166; 91, 25; 96, 317; 121, 531; 131, 578; 133, 333; 143, 218; 144, 61.

Crim. Prac. Act, sec. 105. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Magistrates, who are: See post, sec. 808. As to examination on commission: See post, secs. 1349 et seq.

§ 812. Depositions, what to contain. The deposition must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offense and the guilt of the defendant. En. February 14, 1872.

Cal. Rep. Cit. 74, 166; 91, 25; 133, 333; 143, 218.

Crim. Prac. Act, sec. 105. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 813. **When warrant may issue.** If the magistrate is satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he must issue a warrant of arrest. En. February 14, 1872.

Cal. Rep. Cit. 74, 166; 91, 25; 143, 218.

Crim. Prac. Act, sec. 106. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 814. **Form of warrant.** A warrant of arrest is an order in writing, in the name of the people, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

County of——.

The People of the State of California, to any sheriff, constable, marshal, or policeman of said state, or of the county of ——:

Information on oath having been this day laid before me, by A. B., that the crime of —— (designating it) has been committed, and accusing C. D. thereof, you are therefore commanded forthwith to arrest the above named C. D. and bring him before me at (naming the place), or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at ——, this —— day of ——, eighteen ——. En. February 14, 1872.

Cal. Rep. Cit. 59, 355.

Crim. Prac. Act, sec. 107. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 19, 134.

Before whom to be taken: See post, sec. 824.

§ 815. **Name or description of the defendant in the warrant, and statement of the offense.** The warrant must specify the name of the defendant, or, if it is unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or town where it is issued, and be signed

by the magistrate, with his name of office. En. February 14, 1872.

Cal. Rep. Cit. 59, 355.

Crim. Prac. Act, sec. 108. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 816. **Warrant to be directed to and executed by peace officer.** The warrant must be directed to and executed by a peace officer. En. February 14, 1872.

Crim. Prac. Act, sec. 109. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 817. **Who are peace officers.** A peace officer is a sheriff of a county, or a constable, marshal, or policeman of a township, city, or town. En. February 14, 1872.

Cal. Rep. Cit. 120, 268.

Crim. Prac. Act, sec. 110. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 818. **To what peace officers warrants are to be directed.** If a warrant is issued by a justice of the supreme court, or judge of a superior court, it may be directed generally to any sheriff, constable, marshal, or policeman in the state, and may be executed by any of those officers to whom it may be delivered. En. February 14, 1872. Am'd. 1880, 33.

Cal. Rep. Cit. 54, 103; 82, 190.

Crim. Prac. Act, sec. 111. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 819. **Same; and when and how executed in another county.** If it is issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal, or policeman in the county in which it is issued, and may be executed in that county; or, if the defendant is in another county, it may be executed therein upon the written direction of a magistrate of that county, indorsed upon the warrant, signed by him, with his name of office, and dated at the county, city, or town where it is made, to the following effect: "This warrant may be executed in the county of ——" (naming the county). En. February 14, 1872.

Cal. Rep. Cit. 54, 103; 82, 190.

Crim. Prac. Act, sec. 112. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 820. **Indorsement on warrant, for service in another county.** The indorsement mentioned in the last section cannot, however, be made unless the warrant of arrest be accompanied with a certificate of the clerk of the county where such warrant was issued, under the seal of the superior court thereof, as to the official character of the magistrate, or, unless upon the oath of a credible witness, in writing, indorsed on or annexed to the warrant, proving the handwriting of the magistrate by whom it was issued. Upon such proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterwards appear that the warrant was illegally or improperly issued. En. February 14, 1872. Am'd. 1880, 33.

Crim. Prac. Act, sec. 113. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 821. **Defendant to be taken before the magistrate issuing the warrant, etc.** If the offense charged is a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in section eight hundred and twenty-four. En. February 14, 1872.

Cal. Rep. Cit. 54, 103; 65, 217; 67, 232.

Crim. Prac. Act, sec. 116. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Bail.—Defendant must be taken before magistrate who issued warrant: Post, sec. 824.

§ 822. **Defendant arrested for misdemeanor in another county, to be admitted to bail.** If the offense charged is a misdemeanor, and the defendant is arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail, and take bail from him accordingly. En. February 14, 1872.

Cal. Rep. Cit. 54, 103; 67, 232.

Crim. Prac. Act, sec. 115. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**825.** The defendant must in all cases be taken before the magistrate without unnecessary delay, and after such arrest, any attorney at law entitled to practice in the courts of record of California, may at the request of the prisoner or any relative of such prisoner, visit the person so arrested. Any officer having charge of the prisoner so arrested who wilfully refuses or neglects to allow such attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow an attorney to visit the prisoner when proper application is made therefor shall forfeit and pay to the party aggrieved the sum of five hundred dollars, to be recovered by action in any court of competent jurisdiction. (In effect March 22, 1907.).



§ 823. **Proceedings on taking bail from the defendant in such cases.** On taking the bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear. En. February 14, 1872.

Crim. Prac. Act, sec. 116. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 824. **When bail is not given.** When magistrate who issued warrant cannot act. If, on the admission of the defendant to bail, the bail is not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, or, in case of his absence or inability to act, before the nearest or most accessible magistrate in the same county, and must at the same time deliver to the magistrate the warrant, with his return thereon indorsed and subscribed by him. En. February 14, 1872.

Cal. Rep. Cit. 54, 103; 65, 217.

Crim. Prac. Act, sec. 117. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 118. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 825. **No delay in taking defendant before magistrate.** The defendant must in all cases be taken before the magistrate without unnecessary delay, and any attorney-at-law entitled to practice in courts of record of California, may, at the request of the prisoner after such arrest, visit the person so arrested. En. February 14, 1872. Am'd. 1880, 30.

Crim. Prac. Act, sec. 119. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 826. **Proceedings where defendant is taken before another magistrate.** If the defendant is brought before a magistrate other than the one who issued the warrant, the depositions on which the warrant was granted must be sent to that magistrate, or, if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew. En. February 14, 1872.

Cal. Rep. Cit. 65, 217.

Crim. Prac. Act, sec. 120. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 19, 135.

§ 827. **Proceedings for offenses triable in another county.** When an information is laid before a magistrate of the commission of a public offense triable in another county of the state, but showing that the defendant is in the county where the information is laid, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest and most accessible magistrate of the county in which the offense is triable, and the depositions of the informant or prosecutor, and of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered. En. February 14, 1872.

Crim. Prac. Act, sec. 121. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 828. **Duty of officer.** The officer who executes the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and must deliver to him the depositions and the warrant, with his return indorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself. En. February 14, 1872.

Crim. Prac. Act, sec. 122. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 829. **Admission to bail.** If the offense charged in the warrant issued pursuant to section eight hundred and twenty-seven is a misdemeanor, the officer must, upon being required by the defendant, take him before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail, and immediately transmit the warrant, depositions, and undertaking, to the clerk of the court in which the defendant is required to appear. En. February 14, 1872.

Crim. Prac. Act, sec. 123. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.



## CHAPTER V.

## ARREST, BY WHOM AND HOW MADE.

- § 834. Arrest defined. By whom made.
- § 835. How an arrest is made and what restraint allowed.
- § 836. Arrests by peace officers.
- § 837. Arrests by private persons.
- § 838. Magistrates may order arrest.
- § 839. Persons making arrest may summon assistance.
- § 840. Arrest, when made; without warrant.
- § 841. Arrest, how made
- § 842. Warrant must be shown, when.
- § 843. What force may be used.
- § 844. Doors and windows may be broken, when.
- § 845. Same.
- § 846. Weapons may be taken from persons arrested.
- § 847. Duty of a private person who has made an arrest.
- § 848. Duty of officer arresting with warrant.
- § 849. Person arrested without a warrant to be taken before a magistrate. Information to be filed.
- § 850. Arrest by telegraph.
- § 851. Same.

**§ 834. Arrest defined. By whom made.** An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person. En. February 14, 1872.

**§ 835. How an arrest is made and what restraint allowed.** An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention. En. February 14, 1872.

**§ 836. Arrests by peace officers.** A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person—

1. For a public offense committed or attempted in his presence.

2. When a person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested.

5. At night, when there is reasonable cause to believe that he has committed a felony. En. February 14, 1872.

Cal. Rep. Cit. 104, 89; 120, 268.

Refusing to arrest: Ante, sec. 142.

Warrant, by whom executed: Ante, sec. 816.

Arrest under warrant, duty of officer: Post, sec. 848.

Arrest without warrant, duty of officer: Post, sec. 849.

Peace officers: Ante, sec. 817.

§ 837. Arrests by private persons. A private person may arrest another—

1. For a public offense committed or attempted in his presence.

2. When the person arrested has committed a felony, although not in his presence.

3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it. En. February 14, 1872.

Cal. Rep. Cit. 63, 424; 108, 57; 127, 322.

§ 838. Magistrates may order arrest. A magistrate may orally order a peace officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such magistrate. En. February 14, 1872.

Magistrates, who are: Ante, sec. 808.

§ 839. Persons making arrest may summon assistance. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein. En. February 14, 1872.

§ 840. Arrests, when may be made; without warrant, when. If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate, indorsed upon the warrant, except when the offense is committed in the presence of the arresting officer. En. February 14, 1872. Am'd. 1905, 693.

The purpose of the amendment is to authorize an officer to arrest without a warrant at night-time for a misdemeanor committed in his presence. The change consists in the addition of the words "except when the offense is committed in the presence of the arresting officer."—Code Commissioner's Note.

**§ 841. Arrest, how made.** The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or is pursued immediately after its commission, or after an escape. En. February 14, 1872.

**§ 842. Warrant must be shown, when.** If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required. En. February 14, 1872.

**§ 843. What force may be used.** When the arrest is being made, by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest. En. February 14, 1872.

**§ 844. Doors and windows may be broken, when.** To make an arrest, a private person, if the offense be a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired. En. February 14, 1872. Am'd. 1873-4, 435.

**§ 845. Same.** Any person who has lawfully entered a house for the purpose of making an arrest, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein. En. February 14, 1872.

**§ 846. Weapons may be taken from persons arrested.** Any person making an arrest may take from the person arrested all offensive weapons which he may have about

his person, and must deliver them to the magistrate before whom he is taken. En. February 14, 1872.

§ 847. **Duty of a private person who has made an arrest.** A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace officer. En. February 14, 1872.

§ 848. **Duty of officer arresting with warrant.** An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law. En. February 14, 1872.

Warrant of arrest, form of: Ante, sec. 814.

§ 849. **Person arrested without a warrant to be taken before a magistrate. Information to be filed.** When an arrest is made without a warrant by a peace officer or private person, the person arrested must, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and an information, stating the charge against the person, must be laid before such magistrate. En. February 14, 1872.

§ 850. **Arrest by telegraph.** A justice of the supreme court, or a judge of a superior court, may, by an indorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of such warrant may be sent by telegraph to one or more peace officers, and such copy is as effectual in the hands of any officer, and he must proceed in the same manner under it as though he held an original warrant issued by the magistrate making the indorsement. En. February 14, 1872. Am'd. 1880, 33.

§ 851. **Same.** Every officer causing telegraphic copies of warrants to be sent, must certify as correct, and file in

the telegraph office from which such copies are sent, a copy of the warrant and indorsement thereon, and must return the original with a statement of his action thereunder. En. February 14, 1872.

## CHAPTER VI.

### RETAKING AFTER AN ESCAPE OR RESCUE.

§ 854. May be at any time or in any place in the state.

§ 855. May break open door or window if admittance refused.

§ 854. May be at any time or in any place in the state. If a person arrested escape or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the state. En. February 14, 1872.

Crim. Prac. Act, sec. 144. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Assisting escapes: Ante, sec. 109.

§ 855. May break open door or window if admittance refused. To retake the person escaping or rescued, the person pursuing may break open an outer or inner door or window of a dwelling-house, if, after notice of his intention, he is refused admittance. En. February 14, 1872.

Crim. Prac. Act, sec. 145. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Breaking doors in making arrest: See ante, sec. 844.

## CHAPTER VII.

## EXAMINATION OF THE CASE, AND DISCHARGE OF THE DEFENDANT, OR HOLDING HIM TO ANSWER.

- § 858. Magistrate to inform the defendant of the charge, and his right to counsel.
- § 859. Time to send and sending for counsel.
- § 860. Examination, when to proceed.
- § 861. When to be completed. Postponement.
- § 862. On postponement, defendant to be committed or discharged on bail.
- § 863. Form of commitment.
- § 864. Depositions to be read on examination and subpoenas issued.
- § 865. Examination of witnesses to be in presence of defendant.
- § 866. Examination of defendant's witnesses.
- § 867. Exclusion and separation of witnesses.
- § 868. Who may be present at the examination.
- § 869. Testimony, how taken and authenticated.
- § 870. Deposition, by whom and how kept.
- § 871. Defendant, when and how discharged.
- § 872. When and how to be committed.
- § 873. Order for commitment.
- § 874. Certificate of bail being taken. (Repealed.)
- § 875. Order for bail on commitment.
- § 876. Commitment, how made and to whom delivered.
- § 877. Form of commitment.
- § 878. Undertaking of witnesses to appear.
- § 879. Security for the appearance of witnesses.
- § 880. Infants and married women may be required to give security.
- § 881. Witnesses to be committed on refusal to give security for their appearance.
- § 882. Witness unable to give security may be conditionally examined. Not applicable to prosecutor or accomplice.
- § 883. Magistrate to return depositions, etc., to the court.

§ 858. Magistrate to inform defendant of the charge, and his right to counsel. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings. En. February 14, 1872.

Cal. Rep. Cit. 55, 298; 56, 232; 59, 366; 66, 595; 66, 596; 66, 664; 67, 232; 105, 643.

Crim. Prac. Act, sec. 146. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 44, 557.

§ 859. **Time to send and sending for counsel.** He must also allow the defendant a reasonable time to send for counsel, and postpone the examination for that purpose, and must, upon the request of the defendant, require a peace officer to take a message to any counsel in the township or city the defendant may name. The officer must, without delay and without fee, perform that duty. En. February 14, 1872.

Cal. Rep. Cit. 55, 298; 66, 595; 66, 596; 66, 664; 67, 232; 105, 643.

Crim. Prac. Act, sec. 147. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Defendant's right to counsel. The right to have the assistance of counsel is a constitutional one: Const. 1879, art. I, sec. 13; see ante, sec. 825.

§ 860. **Examination, when to proceed.** If the defendant requires the aid of counsel, the magistrate must, immediately after the appearance of counsel, or if, after waiting a reasonable time therefor, none appears, proceed to examine the case. En. February 14, 1872.

Cal. Rep. Cit. 56, 232; 66, 595; 66, 596; 66, 664; 67, 232; 105, 643.

Crim. Prac. Act, sec. 148. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 861. **When to be completed. Postponement.** The examination must be completed at one session, unless the magistrate, for good cause shown by affidavit, postpone it. The postponement cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant. En. February 14, 1872.

Cal. Rep. Cit. 56, 233; 66, 596; 75, 302; 119, 325; 119, 326; 139, 212.

Crim. Prac. Act, sec. 149. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 862. **On postponement, defendant to be committed or discharged on bail.** If a postponement is had, the magistrate must commit the defendant for examination, admit him to bail or discharge him from custody upon the deposit of money as provided in this code, as security for his appearance at the time to which the examination is postponed. En. February 14, 1872.

Cal. Rep. Cit. 66, 596.

Crim. Prac. Act, sec. 150. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 863. **Form of commitment.** The commitment for examination is made by an indorsement, signed by the magistrate on the warrant of arrest, to the following effect: "The within named A. B. having been brought before me under this warrant, is committed for examination to the sheriff of —." If the sheriff is not present, the defendant may be committed to the custody of a peace officer. En. February 14, 1872.

Cal. Rep. Cit. 59, 366.

Crim. Prac. Act, sec. 151. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 864. **Depositions to be read on examination and subpoenas issued.** At the examination, the magistrate must first read to the defendant the depositions of the witnesses examined on taking the information. He must also issue subpoenas, subscribed by him, for witnesses within the state, required either by the prosecution or the defense. En. February 14, 1872.

Cal. Rep. Cit. 56, 233; 59, 366.

Crim. Prac. Act, sec. 152. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.



§ 865. **Examination of witnesses to be in presence of defendant.** The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf. En. February 14, 1872.

Cal. Rep. Cit. 56, 233; 59, 366.

Crim. Prac. Act, sec. 153. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 866. **Examination of defendant's witnesses.** When the examination of witnesses on the part of the people is closed, any witnesses the defendant may produce must be sworn and examined. En. February 14, 1872.

Crim. Prac. Act, sec. 159. En. April 20, 1850. Rep. 1851, 290, En. 1851, 212.

§ 867. **Exclusion and separation of witnesses.** While a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined. En. February 14, 1872.

Crim. Prac. Act, sec. 160. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See next section.

§ 868. **Who may be present at the examination.** The magistrate must also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney-general, the district attorney of the county, the defendant and his counsel, and the officer having the defendant in custody. En. February 14, 1872.

Cal. Rep. Cit. 115, 61.

Crim. Prac. Act, sec. 161. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1872, 528.

See ante, sec. 867.

§ 869. **Testimony, how taken and authenticated.** The testimony of each witness, in cases of homicide, must be

reduced to writing, as a deposition, by the magistrate, or under his direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his counsel. The magistrate before whom the examination is had may, in his discretion, order the testimony and proceedings to be taken down in shorthand in all examinations herein mentioned, and for that purpose he may appoint a shorthand reporter. The deposition or testimony of the witness must be authenticated in the following form:

First. It must state the name of the witness, his place of residence, and his business or profession.

Second. It must contain the questions put to the witness and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth, except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him.

Third. If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated.

Fourth. The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing, as he gives it, except in cases where the deposition is taken down in shorthand, it need not be signed by the witness.

Fifth. It must be signed and certified by the magistrate when reduced to writing by him, or under his direction, and when taken down in shorthand, the transcript of the reporter appointed as aforesaid, when written out in long-hand writing, and certified as being a correct statement of such testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings. The reporter shall, within ten days after the close of such examination, if the defendant be held to answer the charge, transcribe into longhand writing his said short-

hand notes, and certify and file the same with the county clerk of the county, or city and county, in which the defendant was examined, and shall, in all cases, file his original notes with said clerk.

Sixth. The reporter's compensation shall be fixed by the magistrate before whom the examination is had, and shall not exceed that now allowed reporters in the superior courts of this state, and shall be paid out of the treasury of the county, or the city and county, in which the examination is had, on the certificate and order of the said magistrate. En. February 14, 1872. Am'd. 1880, 30; 1881, 18; 1885, 131.

Cal. Rep. Cit. 50, 95; 50, 96; 54, 576; 54, 577; 56, 233; 57, 652; 59, 366; 64, 86; 66, 102; 66, 664; 66, 676; 67, 232; 68, 503; 69, 602; 74, 393; 75, 101; 75, 302; 75, 303; 77, 215; 83, 362; 100, 5; 105, 656; 105, 657; 127, 161; 127, 424; 127, 426; 133, 334; 142, 221; 142, 443; 142, 444; 143, 382; 143, 577; 143, 578; 145, 741; 145, 742; 145, 743; 145, 749. Subd. 2—57, 651. Subd. 3—75, 100. Subd. 4—69, 602. Subd. 5—68, 503; 77, 215; 106, 649; 127, 244; 133, 333; 143, 381. Subd. 6—83, 364; 83, 365; 83, 366.

Crim. Prac. Act, sec. 162. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Rep. 1855, 269.

§ 870. **Deposition, by whom and how kept.** The magistrate or his clerk must keep the depositions taken on the information or on the examination, until they are returned to the proper court; and must not permit them to be examined or copied by any person except a judge of a court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the attorney-general, district attorney, or other prosecuting attorney, and the defendant and his counsel. En. February 14, 1872.

Cal. Rep. Cit. 56, 233; 133, 333.

§ 871. **Defendant, when and how discharged.** If, after hearing the proofs, it appears either that no public offense

has been committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate must order the defendant to be discharged, by an indorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged." En. February 14, 1872.

Cal. Rep. Cit. 133, 333.

Crim. Prac. Act, sec. 163. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 19, 137.

§ 872. **When and how to be committed.** If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate must make or indorse on the complaint an order, signed by him, to the following effect: "It appearing to me that the offense in the within complaint mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer to the same." En. February 14, 1872. Am'd. 1880, 37; 1905, 763.

The change consists in the substitution of the words "complaint" for "deposition," and in the omission of the words "'and committed to the sheriff of the county of blank," at the end of the section.—Code Commissioner's Note.

Cal. Rep. Cit. 49, 651; 56, 233; 56, 234; 57, 561; 59, 366; 61, 379; 64, 212; 64, 261; 65, 218; 66, 664; 67, 232; 67, 233; 68, 578; 68, 579; 69, 602; 73, 255; 84, 600; 84, 601; 85, 88; 85, 364; 91, 26; 93, 379; 94, 499; 96, 317; 109, 449; 113, 284; 133, 334; 142, 598; 143, 219; 143, 353.

Crim. Prac. Act, sec. 164. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 19, 137.

Time to file information See ante, sec. 809.

§ 873. **Order for commitment.** If the offense is not bailable, the following words must be added to the indorsement: "And he is hereby committed to the sheriff of the county of ——." En. February 14, 1872.

Cal. Rep. Cit. 49, 651.

Crim. Prac. Act, sec. 165. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 874. **Certificate of bail being taken.** (Repealed.) En. February 14, 1872. Rep. 1880, 37.

Cal. Rep. Cit. 49, 651; 51, 376.

Crim. Prac. Act, sec. 166. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 875. **Order for bail on commitment.** If the offense is bailable, and the defendant is admitted to bail, the following words must be added to the order: "And that he be admitted to bail in the sum of —— dollars, and is committed to the sheriff of the county of —— until he gives such bail." En. February 14, 1872. Am'd. 1880, 37.

Cal. Rep. Cit. 49, 651; 84, 601; 84, 602.

Crim. Prac. Act, sec. 167. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Bail generally: See secs. 1268 et seq.

§ 876. **Commitment, how made and to whom delivered.** If the magistrate order the defendant to be committed, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or, if that officer is not present, to a peace officer, who must deliver the defendant into the proper custody, together with the commitment. En. February 14, 1872.

Cal. Rep. Cit. 49, 651; 116, 506; 116, 507.

Crim. Prac. Act, sec. 168. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 877. Form of commitment.** The commitment must be to the following effect:

County of —— (as the case may be).

The people of the state of California to the sheriff of the county of ——:

An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this —— day of ——, eighteen ——. En. February 14, 1872.

Cal. Rep. Cit. 49, 651; 68, 578; 68, 579; 85, 364; 116, 506; 116, 507.

Crim. Prac. Act, sec. 169. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 42, 199.

**§ 878. Undertaking of witnesses to appear.** On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people a written undertaking, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of five hundred dollars. En. February 14, 1872.

Cal. Rep. Cit. 61, 58; 84, 603; 84, 604; 131, 234.

Crim. Prac. Act, sec. 170. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 879. Security for the appearance of witnesses.** When the magistrate or a judge of the court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties,

in such sum as he may deem proper, for his appearance as specified in the preceding section. En. February 14, 1872.

Cal. Rep. Cit. 84, 604.

Crim. Prac. Act, sec. 171. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1870, 787.

Reducing testimony to writing: See ante, sec. 869.

Taking deposition of witness: See Const. 1879, art. I, sec. 13; and post, sec. 882, note.

§ 880. **Infants and married women may be required to give security.** Infants and married women, who are material witnesses against the defendant, may be required to procure sureties for their appearance, as provided in the last section. En. February 14, 1872.

Crim. Prac. Act, sec. 172. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 881. **Witnesses to be committed on refusal to give security for their appearance.** If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate must commit him to prison until he complies or is legally discharged. En. February 14, 1872.

Cal. Rep. Cit. 61, 59.

Crim. Prac. Act, sec. 173. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 882. **Witness unable to give security may be conditionally examined. Not applicable to prosecutor or accomplice.** When, however, it satisfactorily appears by examination, on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people. Such examination must be by question and answer, in the presence of the defendant, or after notice to him, if on bail, and

conducted in the same manner as the examination before a committing magistrate is required by this code to be conducted, and the witness thereupon discharged; and such deposition may be used upon the trial of the defendant, except in cases of homicide, under the same conditions as mentioned in section thirteen hundred and forty-five; but this section does not apply to an accomplice in the commission of the offense charged. En. February 14, 1872. Am'd. 1877-8, 122; 1905, 763.

The change consists in the insertion of the words "and such deposition may be used upon the trial of the defendant, except in cases of homicide, under the same condition as mentioned in section 1345," after the word "discharged."—Code Commissioner's Note.

Cal. Rep. Cit. 49, 38; 64, 86; 84, 603; 84, 604.

Crim. Prac. Act, sec. 174. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 175. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Constitutional provision.—The constitution provides that "the legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend at the trial": Art. I, sec. 13.

§ 883. Magistrate to return depositions, etc., to the court. When a magistrate has discharged a defendant, or has held him to answer, he must return, without delay, to the clerk of the court at which the defendant is required to appear, the warrant, if any, the depositions, and all undertakings or bail, or for the appearance of witnesses taken by him. En. February 14, 1872.

Cal. Rep. Cit. 66, 664; 67, 232; 109, 449; 113, 285; 133, 333.

Crim. Prac. Act, sec. 176. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.



## TITLE IV.

### OF PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT.

Chapter I. Preliminary Provisions, §§ 888-890.

II. Formation of the Grand Jury, §§ 894-910.

III. Powers and Duties of a Grand Jury, §§ 915-929.

IV. Presentment and Proceedings Thereon, §§ 931-937.

### CHAPTER I.

#### PRELIMINARY PROVISIONS.

§ 888. Offenses, how prosecuted.

§ 889. What by accusation or information.

§ 890. Indictments and accusations, in what court found.

§ 888. **Offenses, how prosecuted.** All public offenses triable in the superior courts must be prosecuted by indictment or information, except as provided in the next section. En. February 14, 1872. Am'd. 1880, 12.

Cal. Rep. Cit. 57, 561; 59, 245; 85, 88; 111, 239; 111, 240; 145, 37.

Crim. Prac. Act, sec. 177. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 158.

§ 889. **What by accusation or information.** When the proceedings are had for the removal of district, county, municipal, or township officers, they may be commenced by an accusation or information, in writing, as provided in sections seven hundred and fifty-eight and seven hundred and seventy-two. En. February 14, 1872.

Cal. Rep. Cit. 59, 245; 97, 382; 111, 239; 111, 240; 111, 242; 145, 37.

Crim. Prac. Act, sec. 178. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 890. **Indictments and accusations, in what court found.** All accusations, informations, or indictments against dis-

trict, county, municipal, and township officers, must be found or filed in the superior court. En. February 14, 1872. Am'd. 1880, 34.

Crim. Prac. Act, sec. 179. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 158.

§ 893. [No such section.]

Crim. Prac. Act, sec. 180. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## CHAPTER II.

### FORMATION OF THE GRAND JURY.

§ 894. Who may challenge the panel or an individual juror.

§ 895. Cause of challenge to a panel.

§ 896. Cause of challenge to an individual grand juror.

§ 897. Manner of taking and trying challenges.

§ 898. Decision upon challenges.

§ 899. Effect of allowing a challenge to a panel.

§ 900. Effect of allowing a challenge to an individual juror.

§ 901. Objections can only be taken by challenge.

§ 902. Appointment of a foreman.

§ 903. Oath of foreman.

§ 904. Oath of other grand jurors.

§ 905. Charge of the court.

§ 906. Retirement of the grand jury. Discharge of.

§ 907. Special grand jury.

§ 908. Order for special grand jury.

§ 909. Order, how executed.

§ 910. Special grand jury, how formed.

§ 894. Who may challenge the panel or an individual juror. The people, or a person held to answer a charge for a public offense, may challenge the panel of a grand jury, or an individual juror. En. February 14, 1872.

Crim. Prac. Act, sec. 181. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1854, 80.

See as to formation of grand jury: Code Civ. Proc., secs. 241 et seq.

§ 895. Cause of challenge to a panel. A challenge to the panel may be interposed for one or more of the following causes only:

1. That the requisite number of ballots was not drawn from the jury-box of the county.

2. That notice of the drawing of the grand jury was not given.

3. That the drawing was not had in the presence of the officers designated by law. En. February 14, 1872.

Cal. Rep. Cit. 119, 3.

Crim. Prac. Act, sec. 182. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 896. Cause of challenge to an individual grand juror.**

A challenge to an individual grand juror may be interposed for one or more of the following causes only:

First. That he is a minor.

Second. That he is an alien.

Third. That he is insane.

Fourth. That he is a prosecutor upon a charge against the defendant.

Fifth. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such.

Sixth. That a state of mind exists on his part in reference to the case, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety, provided it satisfactorily appear to the court upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him. En. February 14, 1872. Am'd. 1873-4, 436.

Cal. Rep. Cit. 76, 344; 139, 429. Subd. 2—76, 344. Subd. 6—61, 165; 76, 344; 135, 151; 135, 152; 139, 428.

Crim. Prac. Act, sec. 183. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1870, 786.

Cal. Rep. Cit. 28, 469.

Setting aside indictment or information: Post, sec. 995.

Grounds of challenge to juror: See post, secs. 1072, 1073, 1074.

**§ 897. Manner of taking and trying challenges.** The challenges mentioned in the last three sections may be oral or in writing, and must be tried by the court. En. February 14, 1872. Am'd. 1873-4, 436.

Crim. Prac. Act, sec. 184. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Trial of challenge: See post, sec. 1078.

**§ 898. Decision upon challenges.** The court must allow or disallow the challenge, and the clerk must enter its decisions upon the minutes. En. February 14, 1872.

Crim. Prac. Act, sec. 185. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Similar provision as to trial juror: See post, sec. 1083.

**§ 899. Effect of allowing a challenge to a panel.** If a challenge to the panel is allowed, the grand jury are prohibited from inquiring into the charge against the defendant, by whom the challenge was interposed. If, notwithstanding, they do so, and find an indictment against him, the court must direct it to be set aside. En. February 14, 1872.

Crim. Prac. Act, sec. 186. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 20, 148.

**§ 900. Effect of allowing a challenge to an individual juror.** If a challenge to an individual grand juror is allowed, he cannot be present or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury there-

on. The grand jury must inform the court of a violation of this section, and it is punishable by the court as a contempt. En. February 14, 1872.

Cal. Rep. Cit. 54, 39; 88, 235.

Crim. Prac. Act, sec. 187. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 188. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 20, 148.

§ 901. **Objections can only be taken by challenge.** A person held to answer to a charge for a public offense can take advantage of any objection to the panel or to an individual grand juror in no other mode than by challenge. En. February 14, 1872.

Crim. Prac. Act, sec. 189. En. April 20, 1850. Rep. 1851, 290, En. 1851, 212.

Cal. Rep. Cit. 28, 469.

§ 902. **Appointment of a foreman.** From the persons summoned to serve as grand jurors and appearing, the court must appoint a foreman. The court must also appoint a foreman when the person already appointed is excused or discharged before the grand jury is dismissed. En. February 14, 1872.

Crim. Prac. Act, sec. 190. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 903. **Oath of foreman.** The following oath must be administered to the foreman of the grand jury "You, as foreman of the grand jury, will diligently inquire into, and true presentment make, of all public offenses against the people of this state, committed or triable within this county, of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows and of the government, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor any thing which you or

any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You will present no person through malice, hatred, or ill-will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God." En. February 14, 1872. Am'd. 1873-4, 437.

Cal. Rep. Cit. 64, 527.

Crim. Prac. Act, sec. 191. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 904. **Oath of other grand jurors.** The following oath must be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part, so help you God." En. February 14, 1872.

Crim. Prac. Act, sec. 192. En. April 20, 1850. Rep. 1851, 290, En. 1851, 212.

§ 905. **Charge of the court.** The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court must give them such information as it may deem proper, or as is required by law, as to their duties, and as to any charged for public offenses returned to the court or likely to come before the grand jury. En. February 14, 1872.

Crim. Prac. Act, sec. 193. En. April 20, 1850. Rep. 1851, 290, En. 1851, 212.

§ 906. **Retirement of the grand jury. Discharge of.** The grand jury must then retire to a private room and inquire into the offenses cognizable by them. On the completion of the business before them, they must be discharged by the court; but, whether the business is completed or not,

they are discharged by the final adjournment of the court.  
En. February 14, 1872.

Cal. Rep. Cit. 69, 547.

Crim. Prac. Act, sec. 194. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 195, En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 907. **Special grand jury.** En. February 14, 1872. Rep. 1905, 693.

907, 908, 909, 910. These sections purport to authorize the court, if an offense is committed during a term of court, but after the grand jury has been discharged, to summon another grand jury. There are now no "terms of court," and any necessity which may arise after one grand jury has been discharged can be met by the drawing of another.—Code Commissioner's Note.

Cal. Rep. Cit. 54, 40.

Crim. Prac. Act, sec. 196. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 908. **Order for special grand jury.** En. February 14, 1872. Am'd. 1889, 214. Rep. 1905, 693.

See note to § 907, ante.

Crim. Prac. Act, sec. 197. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1859, 186.

§ 909. **Order, how executed.** En. February 14, 1872. Rep. 1905, 693.

See note to § 907, ante.

Crim. Prac. Act, sec. 198. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 910. **Special grand jury, how formed.** En. February 14, 1872. Rep. 1905, 693.

See note to § 907, ante.

Crim. Prac. Act, sec. 199. En. April 20, 1850. Rep. 1851, 290, En. 1851, 212.

## CHAPTER III.

### POWERS AND DUTIES OF A GRAND JURY.

- § 915. Powers of grand jury.
- § 916. Presentment defined.
- § 917. Indictment defined.
- § 918. Foreman may administer oaths.
- § 919. Evidence receivable before the grand jury.
- § 920. Grand jury not bound to hear evidence for the defendant.
- § 921. Degree of evidence to warrant indictment.
- § 922. Grand jurors must declare their knowledge as to commission of public offense.
- § 923. Must inquire into cases of persons imprisoned, etc.
- § 924. Entitled to access to public prison, etc.
- § 925. When and from whom they may ask advice, and who may be present during their sessions.
- § 926. Secrets of grand jury to be kept, except, etc.
- § 927. Grand juror not to be questioned for his conduct, except, etc.
- § 928. Duties of grand jury.
- § 929. Grand jury may order district attorney to bring suit to recover moneys due the county.

§ 915. **Powers of grand juries.** The grand jury must inquire into all public offenses committed or triable within the county, and present them to the court by indictment. En. February 14, 1872. Am'd. 1905, 694.

The change consists in the omission of the words "either by presentment or," after "court." The change is made for the reason that grand juries no longer have authority to prefer presentments.—Code Commissioner's Note.

Cal. Rep. Cit. 60, 105; 77, 627.

Crim. Prac. Act, sec. 205. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Impaneling grand juries; Const. Cal., art. I, sec. 8; Code Civ. Proc. secs. 241-243; ante, secs. 894 et seq.

§ 916. **Presentment defined.** En. February 14, 1872. Rep. 1905, 693.

This section relates to and defines presentments by grand juries, and, as they no longer have authority to prefer a presentment, the section is superfluous and misleading.—Code Commissioner's Note.

Cal. Rep. Cit. 109, 447.

Crim. Prac. Act, sec. 207. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.



§ 917. **Indictment defined.** An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offense. En. February 14, 1872.

Cal. Rep. Cit. 145, 36.

Crim. Prac. Act, sec. 206. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 44, 557.

Indictment must contain what: Post, sec. 950.

Indictment, sufficiency of: Post, sec. 959.

§ 918. **Foreman may administer oaths.** The foreman may administer an oath to any witness appearing before the grand jury. En. February 14, 1872.

Crim. Prac. Act, sec. 208. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 919. **Evidence receivable before grand juries.** In the investigation of a charge, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of a witness in the cases mentioned in the third subdivision of section six hundred and eighty-six. The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence. En. February 14, 1872. Am'd. 1905, 694.

The change consists in the omission of the words "for the purpose of either presentment or indictment," after "charge." The change is made because grand juries have no longer authority to prefer presentments.—Code Commissioner's Note.

Crim. Prac. Act, sec. 209. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 4, 219.

Crim. Prac. Act, sec. 210. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 4, 226; 19, 542.

§ 920. **Grand jury not bound to hear evidence for the defendant.** The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses. En. February 14, 1872.

Cal. Rep. Cit. 64, 437; 64, 527; 76, 345; 116, 391.

Crim. Prac. Act, sec. 211. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1872, 391.

Cal. Rep. Cit. 19, 543.

§ 921. **Degree of evidence to warrant indictment.** The grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury. En. February 14, 1872.

Cal. Rep. Cit. 137, 224; 144, 638.

Crim. Prac. Act, sec. 212. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 19, 543.

§ 922. **Grand jurors must declare their knowledge as to commission of public offense.** If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow jurors, who must thereupon investigate the same. En. February 14, 1872.

Crim. Prac. Act, sec. 213. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 21, 373.

§ 923. **Must inquire into case of persons imprisoned, etc.** The grand jury must inquire into the case of every person imprisoned in the jail of the county on a criminal charge

and not indicted; into the condition and management of the public prisons within the county; and into the willful or corrupt misconduct in office of public officers of every description within the county. En. February 14, 1872. Am'd. 1905, 694.

The change consists in the substitution of the word "or," in place of "and," between "willful" and "corrupt."—Code Commissioner's Note.

Cal. Rep. Cit. 49, 651.

Crim. Prac. Act, sec. 214. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 924. Entitled to access to public prison, etc. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county. En. February 14, 1872.

Crim. Prac. Act, sec. 215. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 925. When and from whom they may ask advice; who may be present during sessions. The grand jury may, at all times, ask the advice of the court, or the judge thereof, or of the district attorney; but unless such advice is asked, the judge of the court must not be present during the sessions of the grand jury. The district attorney of the county may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever he thinks it necessary; the grand jury, on the demand of the district attorney, whenever criminal causes are being investigated before them, must appoint a competent stenographic reporter to be sworn and to report the testimony that may be given in such causes in shorthand, and reduce the same, upon the request of the district attorney, to longhand or typewriting; a copy of such testimony must be delivered to the defendant upon his arraignment after indictment. The services of such stenographic reporter constitute a charge against the county. No person other than

those specified in this and the succeeding section is permitted to be present during the session of the grand jury, except the members and witnesses actually under examination, and no person must be permitted to be present during the expression of their opinions, or giving their votes upon any matter before them. The grand jury or district attorney may require by subpoena the attendance of any person before the grand jury as interpreter, and such interpreter may, while his services are necessary, be present at the examination of witnesses before the grand jury. En. February 14, 1872. Am'd. 1897, 204; 1905, 694.

The statute of 1871-2, page 540, authorizing the grand jury or district attorney to require the attendance of an interpreter, is codified in the last sentence.—Code Commissioner's Note.

Cal. Rep. Cit. 71, 213; 116, 390; 132, 200; 132, 201; 132, 202; 141, 399; 744, 636; 144, 637, 144, 638.

Crim. Prac. Act, sec. 216. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 216.

Act relating to interpreter before grand jury: See post, Appendix, title Interpreters.

**§ 926. Secrets of grand jury to be kept, except, etc.** Every member of the grand jury must keep secret whatever he himself or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them; but may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against such person for perjury in giving his testimony, or upon trial therefor. En. February 14, 1872.

Cal. Rep. Cit. 64, 527; 64, 528; 77, 633.

Crim. Prac. Act, sec. 217. En. April 20, 1850. Am'd. 1850, 332. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 218. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 19, 545.

§ 927. **Grand juror not to be questioned for his conduct, except, etc.** A grand juror cannot be questioned for anything he may say or any vote he may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow jurors. En. February 14, 1872.

Cal. Rep. Cit. 56, 67.

Crim. Prac. Act, sec. 219. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 928. **Duties of grand jury.** It shall be the duty of the grand jury annually to make a careful and complete examination of the books, records, and accounts of all the officers of the county, and especially those pertaining to the revenue, and report as to the facts they have found, with such recommendations as they may deem proper and fit; and if, in their judgment, the services of an expert are necessary, they shall have power to employ one, at an agreed compensation, not to exceed five dollars per day, payable as other county charges. The judge, on impanelment of such grand jury, shall charge them specially as to their duties under this section; provided, that if any grand jury shall, in the report above mentioned, comment upon any person or official who has not been indicted by the said grand jury, the said comments shall not be deemed to be privileged. En. Stats. 1880, 43. Am'd. 1897, 205.

Cal. Rep. Cit. 141, 399.

§ 929. **Grand jury may order district attorney to bring suit to recover moneys due the county.** The grand jury, after having investigated the books and accounts of the various officials of the county, as in the foregoing section

provided, may order the district attorney of the said county to institute suit to recover any moneys that, in the judgment of the said grand jury may from any cause be due the county, and the order of the said grand jury, certified by the foreman of the said grand jury, filed with the county clerk of the said county, shall be full authority for the said district attorney to institute and maintain any such suit. En. Stats. 1897, 205.

Cal. Rep. Cit. 133, 348; 141, 398; 141, 399.

## CHAPTER IV.

### PRESENTMENT, AND PROCEEDINGS THEREON.

- § 931. Presentment must be by twelve grand jurors, etc. (Repealed.)
- § 932. Must be presented to the court and filed. (Repealed.)
- § 933. Court must direct a bench-warrant if facts constitute a public offense. (Repealed.)
- § 934. Bench-warrant, by whom and how issued. (Repealed.)
- § 935. Form of bench-warrant. (Repealed.)
- § 936. Bench-warrant, how served. (Repealed.)
- § 937. Proceedings of magistrate on defendant being brought before him. (Repealed.)

**§ 931. Presentment must be by twelve grand jurors, etc.**  
En. February 14, 1872. Rep. 1905, 695.

931, 932, 933, 934, 935, 936, 937. These sections compose Chapter IV of Title IV of Part II of the Penal Code. They relate solely to the proceedings after finding a presentment, and since the adoption of the Constitution of 1879 have been inoperative.—Code Commissioner's Note.

Cal. Rep. Cit. 54, 103.

Crim. Prac. Act, sec. 220. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Indictment concurrence of twelve grand jurors: See post, sec. 940.

**§ 932. Must be presented to the court and filed.** En. February 14, 1872. Rep. 1905, 695.

See note to § 931, ante.

Crim. Prac. Act, sec. 221. En. April 20, 1850. Am'd. 1850, 332. Rep. 1851, 290. En. 1851, 212.

§ 933. Court must direct a bench-warrant if facts constitute a public offense. En. February 14, 1872. Rep. 1905, 695.

See note to § 931, ante.

Crim. Prac. Act, sec. 224. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 934. Bench-warrant, by whom and how issued. En. February 14, 1872. Rep. 1905, 695.

See note to § 931, ante.

Crim. Prac. Act, sec. 225. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 37, 280.

§ 935. Form of bench-warrant. En. February 14, 1872. Am'd. 1880, 34. Rep. 1905, 695.

See note to § 931, ante.

Crim. Prac. Act, sec. 226. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 159.

§ 936. Bench-warrant, how served. En. February 14, 1872. Rep. 1905, 695.

See note to § 931, ante.

Cal. Rep. Cit. 54, 103.

Crim. Prac. Act, sec. 227. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 937. Proceedings of magistrate on defendant being brought before him. En. February 14, 1872. Rep. 1905, 695.

See note to § 931, ante.

Crim. Prac. Act, sec. 228. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## TITLE V. OF THE INDICTMENT.

Chapter I. Finding and Presentment of the Indictment, §§ 940-945.

II. Rules of Pleading and Form of the Indictment, §§ 948-972.

### CHAPTER I.

#### FINDING AND PRESENTMENT OF THE INDICTMENT.

- § 940. Indictment must be found by twelve jurors, indorsed, etc.
- § 941. If not found, depositions, etc., must be returned to court, etc.
- § 942. Effect of dismissal.
- § 943. Names of witnesses inserted at foot of indictment.
- § 944. Indictment, how presented and filed.
- § 945. Proceedings when defendant is not in custody.

§ 940. **Indictment must be found by twelve jurors, indorsed, etc.** An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found it must be indorsed, "A true bill," and the indorsement must be signed by the foreman of the grand jury. En. February 14, 1872.

Cal. Rep. Cit. 54, 38.

Crim. Prac. Act, sec. 229. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 21, 372.

§ 941. **If not found, depositions, etc., must be returned to court, etc.** If twelve grand jurors do not concur in finding an indictment against a defendant who had been held to answer, the depositions and statement, if any, transmitted to them must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed. En. February 14, 1872.

Cal. Rep. Cit. 54, 38; 54, 413.

Crim. Prac. Act, sec. 230. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 21, 373.

§ 942. **Effect of dismissal.** The dismissal of the charge does not prevent its resubmission to a grand jury as often



as the court may direct. But without such direction it cannot be resubmitted. En. February 14, 1872.

Cal. Rep. Cit. 54, 413; 54, 414; 65, 218.

Crim. Prac. Act, sec. 231. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 943. **Names of witnesses inserted at foot of indictment.** When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court. En. February 14, 1872.

Cal. Rep. Cit. 54, 103; 56, 38; 71, 213; 104, 377; 130, 75.

Crim. Prac. Act, sec. 232. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 26, 114.

§ 944. **Indictment, how presented and filed.** An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk. En. February 14, 1872.

Cal. Rep. Cit. 54, 38; 145, 37.

Crim. Prac. Act, sec. 233. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 945. **Proceedings when defendant is not in custody.** When an indictment is found against a defendant not in custody, the same proceedings must be had as are prescribed in sections nine hundred and seventy-nine to nine hundred and eighty-four, inclusive, against a defendant who fails to appear for arraignment. En. February 14, 1872.

Cal. Rep. Cit. 55, 298.

Crim. Prac. Act, sec. 234. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 35, 109.

## CHAPTER II.

### RULES OF PLEADING AND FORM OF THE INDICTMENT.

- § 948. Form of and rules of pleading.
- § 949. First pleading by the people is indictment, or information.
- § 950. Indictment, or information, what to contain.
- § 951. Form of.
- § 952. It must be direct and certain.
- § 953. When defendant is indicted by fictitious name, etc.
- § 954. May charge different offenses under separate counts relating to same act; election.
- § 955. Statement as to time when offense was committed.
- § 956. Statement as to person injured or intended to be injured.
- § 957. Construction of words used.
- § 958. Words used in a statute need not be strictly pursued.
- § 959. Indictment or information, when sufficient.
- § 960. Not insufficient for defect of form not tending to prejudice defendant.
- § 961. Presumptions of law, etc., need not be stated.
- § 962. Judgments, etc., how pleaded.
- § 963. Private statutes, how pleaded.
- § 964. Pleading for libel.
- § 965. Pleading for forgery, where instrument has been destroyed or withheld by defendant.
- § 966. Pleading for perjury or subornation of perjury.
- § 967. Pleading for larceny or embezzlement.
- § 968. Pleading for selling, exhibiting, etc., lewd and obscene books.
- § 969. Previous conviction of another offense.
- § 970. Indictment against several, one or more may be acquitted.
- § 971. Distinction between accessory before the fact and principal abrogated.
- § 972. Accessory may be indicted and tried, though principal has not been.

§ 948. **Form of and rules of pleading.** All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this code. En. February 14, 1872.

Cal. Rep. Cit. 90, 571.

Crim. Prac. Act, sec. 235. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 27, 511; 32, 38; 34, 208.

§ 949. **First pleading by the people is indictment, or information.** The first pleading on the part of the people is the indictment or information. En. February 14, 1872. Am'd. 1880, 12.

Cal. Rep. Cit. 57, 561; 85, 88.

Crim. Prac. Act, sec. 236. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Indictment, sufficiency of: See post, sec. 959.

**§ 950. Indictment, or information, what to contain.** The indictment or information must contain:

1. The title of the action, specifying the name of the court to which the same is presented, and the names of the parties;

2. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended. En. February 14, 1872. Am'd. 1880, 12.

Cal. Rep. Cit. 49, 390; 53, 616; 58, 107; 58, 225; 58, 227; 59, 398; 64, 154; 64, 261; 64, 342; 66, 229; 66, 673; 66, 675; 67, 104; 70, 99; 70, 117; 70, 524; 70, 526; 73, 359; 77, 149; 78, 87; 81, 159; 82, 608; 84, 471; 85, 645; 86, 239; 91, 466; 92, 651; 94, 597; 100, 439; 102, 241; 102, 242; 103, 676; 106, 407; 110, 371; 112, 19; 127, 100; 130, 15; 131, 249; 137, 264; 138, 146; 141, 582; 141, 584; 143, 67; 145, 36; 145, 104; 145, 109. Subd. 2—85, 646; 86, 239; 116, 391; 118, 76; 119, 457; 139, 120; 139, 213; 145, 107; 145, 503.

Crim. Prac. Act, sec. 237. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 6, 209; 9, 55; 20, 119; 31, 417; 39, 332; 40, 142.

Indictment defined: Ante, sec. 917.

**§ 951. Form of.** It may be substantially in the following form: The people of the state of California, against A. B., in the superior court of the county of —, the — day of —, A. D. eighteen —. A. B. is accused by the grand jury of the county of —, by this indictment, [or by the district attorney by this information] of the crime of [giving its legal appellation, such as murder, arson, or the like, or designating it as felony or misdemeanor], committed as follows: The said A. B., on the — day of —, A. D. eighteen —, at the county of —, [here set forth the act or omission charged as an offense], contrary to the form, force, and effect of the statute in such case made and provided, and against the peace and dignity of the people of the state of California. En. February 14, 1872. Am'd. 1880, 12.

Cal. Rep. Cit. 49, 390; 58, 107; 58, 225; 58, 227; 68, 154; 64, 261; 64, 342; 65, 566; 66, 229; 67, 104; 70, 99; 70, 117; 70, 524; 70, 526; 77, 149; 78, 85; 81, 159; 82,

608; 84, 471; 85, 645; 91, 466; 94, 597; 100, 439; 102, 241; 105, 509; 106, 407; 112, 19; 118, 76; 119, 457; 127, 100; 130, 14; 137, 644; 138, 146; 141, 584; 143, 67; 145, 36; 145, 104; 145, 109.

Crim. Prac. Act, sec. 238. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 159.

Cal. Rep. Cit. 20, 119; 31, 417; 37, 280; 39, 331; 43, 555.

Sufficiency of indictment: See post, sec. 959.

§ 952. It must be direct and certain. It must be direct and certain, as it regards—

1. The party charged.

2. The offense charged.

3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense. En. February 14, 1872.

Cal. Rep. Cit. 49, 390; 49, 395; 53, 616; 58, 107; 58, 225; 64, 154; 64, 261; 64, 342; 66, 229; 70, 117; 70, 524; 70, 526; 70, 99; 78, 85; 81, 159; 82, 608; 84, 471; 85, 645; 91, 466; 94, 597; 100, 439; 102, 241; 106, 407; 110, 371; 112, 19; 118, 76; 119, 168; 119, 457; 126, 367; 127, 100; 130, 15; 131, 249; 138, 146; 141, 582; 141, 584; 143, 67; 145, 36; 145, 104; 145, 109. Subd. 3—81, 160; 145, 107.

Crim. Prac. Act, sec. 239. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 9, 55; 12, 326; 20, 80; 34, 209; 43, 555.

§ 953. When defendant is indicted by fictitious name, etc. When a defendant is charged by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceeding, referring to the fact of his being charged by the name mentioned in the indictment or information. En. February 14, 1872. Am'd. 1880, 13.

Cal. Rep. Cit. 65, 615; 78, 85; 106, 640; 109, 280.

Crim. Prac. Act, sec. 240. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 954. May charge different offenses under separate counts relating to same act; election. The indictment or

information may charge different offenses, or different statements of the same offense, under separate counts, but they must all relate to the same act, transaction, or event, and charges of offenses occurring at different and distinct times and places must not be joined. The prosecution is not required to elect between the different offenses or counts set forth in the indictment or information, but the defendant can be convicted of but one of the offenses charged, and the same must be stated in the verdict. En. February 14, 1872. Am'd. 1873-4, 437; 1880, 13; 1905, 772.

The amendment is designed to authorize an offense to be set forth under different counts, and to excuse the prosecution from electing between them. Justice Shaw of the Supreme Court strongly urges the change.—Code Commissioner's Note.

Cal. Rep. Cit. 48, 190; 49, 453; 58, 103; 65, 146; 66, 675; 94, 597; 111, 254; 113, 179; 130, 4; 146, 303.

Crim. Prac. Act, sec. 241. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 27, 401; 28, 216.

§ 955. **Statement as to time when offense was committed.** The precise time at which the offense was committed need not be stated in the indictment or information, but it may be alleged to have been committed at any time before the finding or filing thereof, except where the time is a material ingredient in the offense. En. February 14, 1872. Am'd. 1880, 13.

Cal. Rep. Cit. 68, 437; 73, 221; 104, 612; 137, 644; 137, 645.

Crim. Prac. Act, sec. 242. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See post, sec. 959.

§ 956. **Statement as to person injured or intended to be injured.** When an offense involves the commission of, or an attempt to commit, a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material. En. February 14, 1872.

Cal. Rep. Cit. 59, 361; 67, 56; 69, 237; 70, 532; 71, 21; 72, 403; 74, 191; 79, 180; 80, 207; 89, 496; 96, 175; 112, 335; 120, 662; 142, 107; 142, 108; 142, 109; 142, 110; 143, 353.

Crim. Prac. Act, sec. 243. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 17, 336; 28, 216; 29, 262; 35, 113; 37, 280; 41, 236.

§ 957. **Construction of words used.** The words used in an indictment or information are construed in their usual acceptance in common language, except such words and phrases as are defined by law, which are construed according to their legal meaning. En. February 14, 1872. Am'd. 1880, 13.

Cal. Rep. Cit. 90, 571; 120, 663; 145, 503.

Crim. Prac. Act, sec. 244. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Words and phrases defined by law: See ante, sec. 7.

§ 958. **Words used in a statute need not be strictly pursued.** Words used in a statute to define a public offense need not be strictly pursued in the indictment or information, but other words conveying the same meaning may be used. En. February 14, 1872. Am'd. 1880, 13.

Cal. Rep. Cit. 58, 227; 63, 28; 90, 571; 93, 631; 106, 407; 134, 303.

Crim. Prac. Act, sec. 245. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 35 114.

§ 959. **Indictment or information, when sufficient.** The indictment or information is sufficient, if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court be not stated.

2. If an indictment, that it was found by a grand jury of the county in which the court was held, or if an information, that it was subscribed and presented to the court by the district attorney of the county in which the court was held.

3. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is to the jury or district attorney, as the case may be, unknown.

4. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county, is triable therein.

5. That the offense was committed at some time prior to the time of finding the indictment or filing of the information.

6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

7. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case. En. February 14, 1872. Am'd. 1880, 13.

Cal. Rep. Cit. 49, 391; 57, 565; 58, 228; 73, 359; 75, 630; 77, 149; 77, 447; 78, 90; 80, 288; 93, 583; 96, 175; 103, 676; 106, 407; 118, 26; 136, 392; 137, 264. Subd. 3—127, 378. Subd. 5—99, 329; 137, 644. Subd. 6—80, 230; 89, 496; 90, 572; 93, 445; 125, 370; 145, 503.

Crim. Prae. Act, sec. 246. En. April 20, 1850. Rep. 1851. 290. En. 1851, 212.

Cal. Rep. Cit. 6, 203; 6, 488; 9, 55; 21, 403; 27, 511; 31, 418; 35, 673; 37, 280; 39, 332.

Form of indictment or information: See ante, sec. 951.

Indictment for particular crime: See Particular Crime.

Finding of indictment: Ante, sec. 940.

Statement of acts constituting the offense: See ante, \*sec. 950.

Number of counts in indictment: See ante, sec. 954.

§ 960. **Not insufficient for defect of form not tending to prejudice defendant.** No indictment or information is insufficient, nor can the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form which does not tend to the prejudice of a substantial right of the defendant upon its merits. En. February 14, 1872. Am'd. 1880, 14.

Cal. Rep. Cit. 56, 444; 58, 228; 61, 390; 64, 54; 64, 426; 65, 446; 75, 99; 77, 149; 78, 90; 80, 288; 81, 279; 88,

139; 90, 572; 93, 583; 102, 242; 103, 677; 106, 408; 120, 663; 125, 370; 127, 378; 133, 73; 137, 264; 138, 535; 139, 116; 143, 353; 145, 504.

Crim. Prac. Act, sec. 247. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 9, 55; 28, 210; 28, 329; 31, 418; 39, 331.

**§ 961. Presumptions of law, etc., need not be stated.** Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment or information. En. February 14, 1872. Am'd. 1880, 14.

Crim. Prac. Act, sec. 248. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 962. Judgments, etc., how pleaded.** In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts constituting jurisdiction; but the judgment or determination may be stated as given or made, or the proceedings had. The facts constituting jurisdiction, however, must be established on the trial. En. February 14, 1872.

Cal. Rep. Cit. 136, 393.

Crim. Prac. Act, sec. 249. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 963. Private statutes, how pleaded.** In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof. En. February 14, 1872.

Cal. Rep. Cit. 115, 447; 126, 229.

Crim. Prac. Act, sec. 250. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 964. Pleading for libel.** An indictment or information for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment or information is founded; but it is sufficient to state generally that the same was published concerning him, and



the fact that it was so published must be established on the trial. En. February 14, 1872. Am'd. 1880, 14.

Cal. Rep. Cit. 139, 120.

Crim. Prac. Act, sec. 251. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 965. Pleading for forgery, where the instrument has been destroyed or withheld by defendant. When an instrument which is the subject of an indictment or information for forgery has been destroyed or withheld by the act or the procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment or information, and established on the trial, the misdescription of the instrument is immaterial. En. February 14, 1872. Am'd. 1880, 14.

Crim. Prac. Act, sec. 252. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 966. Pleading for perjury or subornation of perjury. In an indictment or information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court and before whom the oath alleged to be false was taken, and that the court, or the person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment or information need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed. En. February 14, 1872. Am'd. 1880, 14.

Cal. Rep. Cit. 64, 341; 77, 14; 113, 75; 124, 464; 131, 249; 137, 264.

Crim. Prac. Act, sec. 253. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See ante, secs. 118, 127.

§ 967. Pleading for larceny or embezzlement. In an indictment or information for the larceny or embezzlement of money, bank-notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and

defraud, to be of money, bank-notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof. En. February 14, 1872. Am'd. 1873-4, 438; 1880, 15.

Cal. Rep. Cit. 89, 226; 100, 439; 106, 323; 108, 541.

See ante, secs. 954, 958.

**§ 968. Pleading for selling, exhibiting, etc., lewd and obscene books.** An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof. En. February 14, 1872. Am'd. 1880, 15.

**§ 969. Previous conviction of another offense.** In charging in an indictment or information the fact of a previous conviction of a felony, or of an attempt to commit an offense which, if perpetrated, would have been a felony, or of petit larceny it is sufficient to state, "That the defendant, before the commission of the offense charged in this indictment or information, was in (giving the title of the court in which the conviction was had) convicted of a felony (or attempt, etc., or petit larceny)." If more than one previous conviction is charged, the date of the judgment upon each conviction must be stated, but not more than two previous convictions must be charged in any one indictment or information. En. February 14, 1872. Am'd. 1873-4, 438. Rep. 1880, 15. En. 1905, 772.

This is the section as it existed prior to its repeal in 1880. It is believed that no good reason for such repeal existed.—Code Commissioner's Note.

Cal. Rep. Cit. 57, 560; 57, 561; 64, 154; 64, 339; 64, 340; 64, 403; 65, 298; 73, 447; 73, 451; 88, 118; 138, 535; 142, 13.

**§ 970. Indictment against several, one or more may be acquitted.** Upon an indictment or information against several defendants, any one or more may be convicted or acquitted. n. February 14, 1872. Am'd. 1880, 15.

Crim. Prac. Act, sec. 254. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 971. **Distinction between accessory before the fact and principal abrogated.** The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried, and punished as principals, and no other facts need be alleged in any indictment or information against such an accessory than are required in an indictment or information against his principal. En. February 14, 1872. Am'd. 1873-4, 438; 1880, 15.

Cal. Rep. Cit. 66, 393; 78, 87; 78, 89; 122, 492; 123, 412; 144, 79; 144, 80.

Crim. Prac. Act, sec. 255. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 6, 24; 27, 341; 40, 141.

§ 972. **Accessory may be indicted and tried, though principal has not been.** An accessory to the commission of a felony may be prosecuted, tried, and punished, though the principal may be neither prosecuted nor tried, and though the principal may have been acquitted. En. February 14, 1872. Am'd. 1873-4, 439; 1880, 15.

Crim. Prac. Act, sec. 256. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## TITLE VI.

## OF PLEADINGS AND PROCEEDINGS AFTER INDICTMENT AND BEFORE THE COMMENCEMENT OF THE TRIAL.

Chapter I. Of the Arraignment of the Defendant, §§ 976-990.

II. Setting Aside the Indictment, §§ 995-999.

III. Demurrer, §§ 1002-1012.

IV. Plea, §§ 1016-1025.

V. Transmission of Certain Indictments from the County Court to the District Court of Municipal Criminal Court of San Francisco, §§ 1028-1030.

VI. Removal of the Action before Trial, §§ 1033-1038.

VII. The Mode of Trial, §§ 1041-1043.

VIII. Formation of the Trial Jury and the Calendar of Issues for Trial, §§ 1046-1049.

IX. Postponement of the Trial, § 1052.

## CHAPTER I.

## OF THE ARRAIGNMENT OF THE DEFENDANT.

- § 976. Defendant must be arraigned in the court where the indictment is filed or transferred.
- § 977. Defendant, when to be present at arraignment.
- § 978. If in custody, to be brought before court.
- § 979. If discharged on bail, bench-warrant to issue.
- § 980. Bench-warrant, by whom and how issued.
- § 981. Form of bench-warrant.
- § 982. Directions in the bench-warrant.
- § 983. Bench-warrant, how served.
- § 984. Proceeding on giving bail in another county.
- § 985. Ordering defendant into custody or increasing bail when indictment is for felony.
- § 986. Defendant, if present when order made, to be committed; if not, bench-warrant to issue.
- § 987. Right to counsel on arraignment.
- § 988. Arraignment, how made.
- § 989. Proceedings on arraignment, when defendant is not indicted by his true name.
- § 990. Time allowed, and how defendant may answer on arraignment.

§ 976. Defendant must be arraigned in the court where the indictment is filed or transferred. When the indict-

ment or information is filed, the defendant must be arraigned thereon before the court in which it is filed, unless the cause is transferred to some other county for trial. En. February 14, 1872. Am'd. 1880, 15.

Cal. Rep. Cit. 60, 105; 60, 106; 78, 564; 142, 109.

Crim. Prac. Act, sec. 258. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 977. **Defendant, when to be present at arraignment.** If the indictment or information be for a felony, the defendant must be personally present; but if for a misdemeanor, he may appear upon the arraignment by counsel. En. February 14, 1872. Am'd. 1880, 16.

Cal. Rep. Cit. 55, 298; 57, 350.

Crim. Prac. Act, sec. 259. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 42, 168.

See Const. Cal., art. I, sec. 13.

§ 978. **If in custody, to be brought before court.** When his personal appearance is necessary, if he is in custody, the court may direct and the officer in whose custody he is must bring him before it to be arraigned. En. February 14, 1872.

Cal. Rep. Cit. 57, 350.

Crim. Prac. Act, sec. 260. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 979. **If discharged on bail, bench-warrant to issue.** If the defendant has been discharged on bail, or has deposited money instead thereof, and do not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench-warrant for his arrest. En. February 14, 1872.

Cal. Rep. Cit. 55, 298; 56, 84; 57, 350.

Crim. Prac. Act, sec. 261. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 35, 109.

§ 980. **Bench-warrant, by whom and how issued.** The clerk, on the application of the district attorney, may, at

any time after the order, whether the court is sitting or not, issue a bench-warrant to one or more counties. En. February 14, 1872.

Cal. Rep. Cit. 55, 298.

Crim. Prac. Act, sec. 262. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 35, 109.

§ 981. **Form of bench-warrant.** The bench-warrant upon the indictment or information must, if the offense is a felony, be substantially in the following form: County of \_\_\_\_\_. The people of the state of California to any sheriff, constable, marshal, or policeman in this state: An indictment having been found [or information filed] on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. eighteen \_\_\_\_\_, in the superior court of the county of \_\_\_\_\_, charging C. D. with the crime of \_\_\_\_\_ [designating it generally]; you are, therefore, commanded forthwith to arrest the above named C. D., and bring him before that court, [or if the indictment and information has been sent to another court, then before that court, naming it] to answer said indictment [or information], or if the court be not in session, that you deliver him into the custody of the sheriff of the county of \_\_\_\_\_.

Given under my hand, with the seal of said court affixed, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_.

By order of said court.

[Seal.]

E. F., Clerk.

En. February 14, 1872. Am'd. 1880, 16.

Cal. Rep. Cit. 54, 103; 55, 298.

Crim. Prac. Act, sec. 263. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 159.

§ 982. **Directions in the bench-warrant.** The defendant, when arrested under a warrant for an offense not bailable, must be held in custody by the sheriff of the county in which the indictment is found or information filed, unless admitted to bail after an examination upon a writ of habeas corpus; but if the offense is bailable, there must be added to the body of the bench-warrant a direction to the following effect: "Or, if he requires it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer to the in-

dictment, or [information]''; and the court, upon directing it to issue, must fix the amount of bail, and an indorsement must be made thereon and signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of — dollars." En. February 14, 1872. Am'd. 1880, 16.

Cal. Rep. Cit. 54, 103; 55, 298.

Crim. Prac. Act, sec. 264. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 265. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 266. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 983. **Bench-warrant, how served.** The bench-warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by the magistrate of that county. En. February 14, 1872.

Cal. Rep. Cit. 55, 298.

Crim. Prac. Act, sec. 267. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 984. **Proceeding on giving bail in another county.** If the defendant is brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings must be had thereon. En. February 14, 1872.

Cal. Rep. Cit. 55, 298.

Crim. Prac. Act, sec. 268. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See Arrest, ante, secs. 841-851.

§ 985. **Ordering defendant into custody or increasing bail when indictment is for felony.** When the information or indictment is for a felony, and the defendant, before the filing thereof, has given bail for his appearance to answer the charge, the court to which the indictment or information is presented, or in which it is pending, may order the defendant to be committed to actual custody, unless he

gives bail in an increased amount, to be specified in the order. En. February 14, 1872. Am'd. 1873-4, 439; 1880, 16.

Crim. Prac. Act, sec. 269. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 35, 109.

§ 986. Defendant, if present when order made, to be committed; if not, bench-warrant to issue. If the defendant is present when the order is made, he must be forthwith committed. If he is not present, a bench-warrant must be issued and proceeded upon in the manner provided in this chapter. En. February 14, 1872.

Crim. Prac. Act, sec. 270. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 987. Right to counsel on arraignment. If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him. En. February 14, 1872.

Cal. Rep. Cit. 55, 298; 66, 229; 102, 231; 137, 645.

Crim. Prac. Act, sec. 271. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Right to have counsel: Article VI of the amendments to the constitution of the United States; art. I, sec. 13, state constitution.

§ 988. Arraignment, how made. The arraignment must be made by the court, or by the clerk or district attorney under its direction, and consists in reading the indictment or information to the defendant and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses, and asking him whether he pleads guilty or not guilty to the indictment or information. En. February 14, 1872. Am'd. 1880, 16.



Cal. Rep. Cit. 65, 296; 65, 297; 66, 229; 71, 387; 73, 445; 73, 446; 76, 347; 88, 117; 104, 377; 137, 645; 145, 610; 145, 611.

Crim. Prac. Act, sec. 272. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 330.

See ante, secs. 858, 859, 976, and post, sec. 990.

§ 989. **Proceedings on arraignment, when defendant is not indicted by his true name.** When the defendant is arraigned, he must be informed that if the name by which he is prosecuted is not his true name, he must then declare his true name, or be proceeded against by the name in the indictment or information. If he gives no other name, the court may proceed accordingly; but if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the information or indictment may be had against him by that name, referring also to the name by which he was first charged therein. En. February 14, 1872. Am'd. 1880, 17.

Cal. Rep. Cit. 66, 229; 109, 280.

Crim. Prac. Act, sec. 273. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 6, 212.

Crim. Prac. Act, sec. 274. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 275. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See ante, sec. 988.

§ 990. **Time allowed, and how defendant may answer on arraignment.** If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one day, to answer the indictment or information. He may, in answer to the arraignment, move to set aside, demur, or plead to the indictment or information. En. February 14, 1872. Am'd. 1880, 17.

Cal. Rep. Cit. 90, 200.

Crim. Prac. Act, sec. 276. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prae. Act, sec. 277. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 21, 372; 26, 114; 28, 272; 34, 308.

## CHAPTER II.

### SETTING ASIDE THE INDICTMENT.

§ 995. Indictment, when set aside on motion.

§ 996. Defendant waives objections, unless he makes the motion.

§ 997. Motion, when heard. If denied or granted, what proceedings are to be had.

§ 998. Effect of order for submission.

§ 999. Order no bar to another prosecution.

§ 995. **Indictment, when set aside on motion.** The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases. If it be an indictment:

1. Where it is not found, indorsed, and presented as prescribed in this code.

2. When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or indorsed thereon.

3. When a person is permitted to be present during the session of the grand jury, and when the charge embraced in the indictment is under consideration, except as provided in section nine hundred and twenty-five.

4. When the defendant had not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

If it be on information:

1. That before the filing thereof the defendant had not been legally committed by a magistrate.

2. That it was not subscribed by the district attorney of the county. En. February 14, 1872. Am'd. 1880, 43.

Cal. Rep. Cit. 49, 650; 49, 651; 54, 38; 54, 399; 56, 38; 59, 365; 64, 261; 64, 382; 64, 528; 65, 218; 65, 614; 65, 615; 68, 503; 69, 547; 69, 602; 71, 212; 71, 213; 76, 345; 82, 621; 83, 558; 88, 85; 88, 235; 90, 200; 91, 642; 115, 60; 117, 560; 122, 39; 130, 74; 139, 429; 145, 37. Subd. 1—76, 344; 143, 218. Subd. 2—76, 344. Subd. 3—54, 39; 132, 200. Subd. 4—119, 2; 119, 325; 135, 151.

Crim. Prae. Act, sec. 278. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 4, 219; 4, 225; 21, 372; 26, 114; 28, 272; 46, 147; 46, 154.

Crim. Prae. Act, sec. 279. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 34, 308.

§ 996. Defendant waives objections, unless he makes the motion. If the motion to set aside the indictment or information is not made, the defendant is precluded from afterward taking the objections mentioned in the last section. En. February 14, 1872. Am'd. 1880, 17.

Cal. Rep. Cit. 48, 550; 82, 621; 90, 200.

Crim. Prae. Act, sec. 280. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 21, 372; 28, 272; 34, 308; 48, 550.

§ 997. Motion, when heard. If denied or granted, what proceedings are to be had. The motion must be heard at the time it is made, unless for cause the court postpones the hearing to another time. If the motion is denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto. If the motion is granted, the court must order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he has deposited money instead of bail, that the same be refunded to him,

unless it directs that the case be resubmitted to the same or another grand jury, or that an information be filed by the district attorney; provided, that after such order of re-submission the defendant may be examined before a magistrate, and discharged or committed by him, as in other cases, if before indictment or information filed he has not been examined and committed by a magistrate. En. February 14, 1872. Am'd. 1880, 17.

Cal. Rep. Cit. 88, 85; 101, 515; 127, 64; 130, 74.

Crim. Prac. Act, sec. 281. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 282. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 283. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Resubmission of charge: See ante, sec. 942.

Jeopardy: See ante, sec. 687.

§ 998. **Effect of order for submission.** If the court directs the case to be resubmitted, or an information to be filed, the defendant, if already in custody, must so remain, unless he is admitted to bail; or, if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment or information; and, unless a new indictment is found, or information filed before the next grand jury of the county is discharged, the court must, on the discharge of such grand jury, make the order prescribed by the preceding section. En. February 14, 1872. Am'd. 1880, 17.

Crim. Prac. Act, sec. 284. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 285. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 999. **Order no bar to another prosecution.** An order to set aside an indictment or information, as provided in

this chapter, is no bar to a future prosecution for the same offense. En. February 14, 1872. Am'd. 1880, 18.

Cal. Rep. Cit. 123, 455; 127, 64; 130, 75.

Crim. Prac. Act, sec. 286. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Jeopardy: See ante, sec. 687.

CHAPTER III.

DEMURRER.

- 1002. Pleading on part of defendant.
- 1003. Demurrer or plea, when put in.
- 1004. Grounds for demurrer.
- 1005. Demurrer, how put in, and its form.
- 1006. When heard.
- 1007. Judgment on demurrer.
- 1008. If allowed, bar to another prosecution, when.
- 1009. If resubmission not ordered, defendant discharged, etc.
- 1010. Proceedings, if submission ordered.
- 1011. Proceedings, if demurrer is disallowed.
- 1012. Objection, forming ground of demurrer, when taken.

§ 1002. **Pleading on part of defendant.** The only pleading on the part of the defendant is either a demurrer or a plea. En. February 14, 1872.

Crim. Prac. Act, sec. 287. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1003. **Demurrer or plea, when put in.** Both the demurrer and plea must be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose. En. February 14, 1872.

Crim. Prac. Act, sec. 288. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Time to plead: Ante, sec. 990.

§ 1004. **Grounds for Demurrer.** The defendant may demur to the indictment or information, when it appears upon the face thereof either:

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense

charged, by reason of its not being within the legal jurisdiction of the county; or, if an information, that the court has no jurisdiction of the offense charged therein;

2. That it does not substantially conform to the requirements of sections nine hundred and fifty, nine hundred and fifty-one, and nine hundred and fifty-two;

3. That more than one offense is charged, except as provided in section nine hundred and fifty-four;

4. That the facts stated do not constitute a public offense;

5. That it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution. En. February 14, 1872. Am'd. 1880, 18; 1905, 772.

The change consists in the insertion of the words "except as provided in section 954," after "warden." The object of the amendment is to make this section conform to the proposed change in section 954. —Code Commissioner's Note.

Cal. Rep. Cit. 47, 108; 47, 113; 48, 252; 48, 559; 49, 390; 56, 535; 58, 225; 64, 158; 64, 261; 68, 504; 71, 389; 71, 392; 77, 34; 82, 620; 82, 621; 85, 89; 103, 428; 103, 677; 119, 168; 120, 661; 131, 250; 138, 535. Subd. 1—133, 624. Subd. 2—107, 480. Subd. 3—106, 640. Subd. 4—133, 624.

Crim. Prae. Act, sec. 289. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 17, 361; 27, 402; 29, 262; 43, 83.

Subd. 2. Specific requirements, etc.; See ante, secs. 950, 951, 952, 954, 959.

Waiver of objection by not demurring: See post, sec. 1012.

§ 1005. **Demurrer, how put in, and its form.** The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment or information, or it must be disregarded. En. February 14, 1872. Am'd. 1880, 18.

Cal. Rep. Cit. 138, 535.

Crim. Prac. Act, sec. 290. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1006. **When heard.** Upon the demurrer being filed, the argument upon the objections presented thereby must be heard, either immediately or at such time as the court may appoint. En. February 14, 1872.

Crim. Prac. Act, sec. 291. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1007. **Judgment on demurrer.** Upon considering the demurrer, the court must give judgment, either allowing or disallowing it, and an order to that effect must be entered upon the minutes. En. February 14, 1872.

Cal. Rep. Cit. 65, 566; 65, 645; 121, 494.

Crim. Prac. Act, sec. 292. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1008. **If allowed, bar to another prosecution, when.** If the demurrer is allowed, the judgment is final upon the indictment or information demurred to, and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment or information, directs the case to be submitted to the same or another grand jury, or directs a new information to be filed; provided, that after such order or resubmission, the defendant may be examined before a magistrate, and discharged or committed by him, as in other cases. En. February 14, 1872. Am'd. 1880, 18; 1905, 773.

The purpose of the amendment is to authorize, where a demurrer to an indictment is sustained, the resubmission of the charge to the grand jury which found the original indictment, if it has not been discharged. This amendment changes the rule announced in *Terrill v. Superior Court*, 60 Pac. Rep. 516. To accomplish this, the words "the same or" have been inserted before the word "another."—Code Commissioner's Note.

Cal. Rep. Cit. 63, 219; 77, 34; 107, 478; 116, 513; 116, 514; 117, 560; 118, 27; 132, 39; 143, 217.

Crim. Prac. Act, sec. 293. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 274; 28, 275; 28, 276; 39, 609.

§ 1009. **If resubmission not ordered, defendant discharged, etc.** If the court does not permit the information to be amended, nor direct that an information be filed, or that the case be resubmitted, as provided in the preceding section, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him. En. February 14, 1872. Am'd. 1880, 18.

Cal. Rep. Cit. 116, 514.

Crim. Prac. Act, sec. 294. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 39, 609.

§ 1010. **Proceedings, if submission ordered.** If the court directs that the case be resubmitted, the same proceedings must be had thereon as are prescribed in sections nine hundred and ninety-seven and nine hundred and nine-eight. En. February 14, 1872.

Crim. Prac. Act, sec. 295. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 39, 609.

§ 1011. **Proceedings, if demurrer is disallowed.** If the demurrer is disallowed, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may direct. If he does not plead, judgment may be pronounced against him. En. February 14, 1872.

Cal. Rep. Cit. 68, 181; 102, 232.

Crim. Prac. Act, sec. 296. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 268; 28, 269; 28, 273; 28, 274; 28, 275; 28, 276.

See ante, sec. 689.



§ 1012. **Objection, forming ground of demurrer, when taken.** When the objections mentioned in section one thousand and four appear on the face of the indictment or information, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment or information, or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, or after the trial, in arrest of judgment. En. February 14, 1872. Am'd. 1880, 19.

Cal. Rep. Cit. 47, 108; 58, 225; 64, 158; 66, 230; 68, 504; 71, 389; 90, 199; 100, 439; 103, 428; 103, 566; 103, 677; 119, 168; 127, 549; 131, 250; 133, 624; 138, 535; 145, 503.

Crim. Prac. Act, sec. 297. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 7, 136; 17, 361; 27, 402; 27, 403; 28, 469.

## CHAPTER IV.

### PLEA.

- § 1016. The different kinds of pleas.
- § 1017. Plea, how put in, and its form.
- § 1018. Plea of guilty, how put in, and when withdrawn.
- § 1019. What plea of not guilty puts in issue.
- § 1020. What may be given in evidence under plea of not guilty.
- § 1021. What is not a former acquittal.
- § 1022. What is a former acquittal.
- § 1023. Conviction or acquittal for a higher offense, effect of.
- § 1024. Defendant refusing to answer, plea of not guilty.
- § 1025. Previous conviction.

§ 1016. **The different kinds of pleas.** There are four kinds of pleas to an indictment or information. A plea of—

1. Guilty.

2. Not guilty.

3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.

4. Once in jeopardy. En. February 14, 1872. Am'd. 1880, 44.

Cal. Rep. Cit. 48, 329; 49, 396; 60, 86.

Crim. Prac. Act, sec. 298. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1017. **Plea, how put in, and its form.** Every plea must be oral, and entered upon the minutes of the court in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offense charged."

2. If he plead not guilty: "The defendant pleads that he is not guilty of the offense charged."

3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted [or acquitted] of the offense charged by the judgment of the court of —— [naming it], rendered at —— [naming the place], on the —— day of ——."

4. If he pleads once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged [specifying the time, place, and court]." En. February 14, 1872. Am'd. 1880, 44.

Cal. Rep. Cit. 47, 124; 49, 395; 52, 480; 55, 298; 64, 403; 73, 445; 77, 33; 101, 282; 146, 315. Subd. 4—143, 129.

Crim. Prac. Act, sec. 299. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 4, 242.

Crim. Prac. Act, sec. 300. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 32, 433.

Pleas generally: Ante, sec. 1016.

**Plea of guilty.**—This plea can only be put in by the defendant himself in open court, unless upon indictment against a corporation, in which case it may be put in by counsel: Post, sec. 1018.

Insanity: Ante, sec. 26 subd. 3.

Evidence under plea of not guilty: Post, sec. 1020.

§ 1018. **Plea of guilty, how put in, and when withdrawn.** A plea of guilty can be put in by the defendant himself only in open court, unless upon indictment of information

against a corporation, in which case it may be put in by counsel. The court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted. En. February 14, 1872. Am'd. 1880, 19.

Cal. Rep. Cit. 82, 618; 82, 619; 114, 16.

Crim. Prac. Act, sec. 301. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 4, 242.

Crim. Prac. Act, sec. 302. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1019. **What plea of not guilty puts in issue.** The plea of not guilty puts in issue every material allegation of the indictment or information. En. February 14, 1872. Am'd. 1880, 19.

Cal. Rep. Cit. 60, 86; 88, 117.

Crim. Prac. Act, sec. 303. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 43, 152.

§ 1020. **What may be given in evidence under plea of not guilty.** All matters of fact tending to establish a defense, other than one specified in the third and fourth subdivision of section one thousand and sixteen, may be given in evidence under the plea of not guilty. En. February 14, 1872. Am'd. 1880, 44; 1905, 773.

Cal. Rep. Cit. 48, 329; 60, 86; 114, 59; 146, 311; 146, 314; 146, 315.

Crim. Prac. Act, sec. 304. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1021. **What is not a former acquittal.** If the defendant was formerly acquitted on the ground of variance between the indictment or information and the proof, or the indictment or information was dismissed upon an objection to its form or substance, or in order to hold the defendant for a

higher offense, without a judgment of acquittal, it is not an acquittal of the same offense. En. February 14, 1872. Am'd. 1880, 19.

Cal. Rep. Cit. 70, 65; 79, 179; 79, 181; 132, 500; 133, 129.

Crim. Prac. Act, sec. 305. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 41, 236.

§ 1022. **What is a former acquittal.** Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any defect in form or substance in the indictment or information on which the trial was had. En. February 14, 1872. Am'd. 1880, 19.

Crim. Prac. Act, sec. 306. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1023. **Conviction or acquittal for a higher offense, effect of.** When the defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment or information, the conviction, acquittal, or jeopardy is a bar to another indictment or information for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment or information. En. February 14, 1872. Am'd. 1880, 45.

Cal. Rep. Cit. 99, 231; 132, 500; 133, 129; 138, 484.

Crim. Prac. Act, sec. 307. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See ante, sec. 1016, subd. 3.

§ 1024. **Defendant refusing to answer, plea of not guilty.** If the defendant refuses to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered. En. February 14, 1872. Am'd. 1880, 19.

Cal. Rep. Cit. 71, 396.

Crim. Prac. Act, sec. 308. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 269.

§ 1025. **Previous conviction.** When a defendant who is charged in the indictment or information with having suffered a previous conviction, pleads either guilty or not guilty of the offense for which he is indicted or informed against, he must be asked whether he has suffered such previous conviction. If he answers that he has, his answer must be entered by the clerk in the minutes of the court, and must, unless withdrawn by consent of the court, be conclusive of the fact of his having suffered such previous conviction in all subsequent proceedings. If he answers that he has not, his answer must be entered by the clerk in the minutes of the court, and the question whether or not he has suffered such previous conviction must be tried by the jury which tries the issue upon the plea of not guilty, or in case of a plea of guilty, by a jury impaneled for that purpose. The refusal of the defendant to answer is equivalent to a denial that he has suffered such previous conviction. In case the defendant pleads not guilty, and answers that he has suffered the previous conviction, the charge of the previous conviction must not be read to the jury, or alluded to on the trial. En. Stats. 1873-4, 439. Rep. 1880, 19. En. 1905, 773.

This is the section as it existed prior to its repeal in 1880. By such repeal no provision was left for any plea to a charge of former conviction, and it is believed this should be provided for in the Code.—Code Commissioner's Note.

Cal. Rep. Cit. 57, 561; 57, 572; 64, 339; 64, 340; 64, 341; 65, 298; 73, 443; 73, 444; 73, 445; 73, 446; 73, 447; 73, 450; 73, 451; 88, 118; 142, 13.

## CHAPTER V.

### TRANSMISSION OF CERTAIN INDICTMENTS FROM THE COUNTY COURT TO THE DISTRICT COURT, OR MUNICIPAL CRIMINAL COURT OF SAN FRANCISCO.

§ 1028. Transmission of indictments from the county to district courts. (Repealed.)

§ 1029. Indictments against a superior judge.

§ 1030. Indictments transmitted to municipal criminal court. (Repealed.)

§ 1028. Transmission of indictments from the county to district courts. (Repealed.) En. February 14, 1872. Am'd. 1873-4, 440. Rep. 1880, 6.

Cal. Rep. Cit. 51, 601.

Crim. Prac. Act, sec. 309. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1860, 31; 1863, 160.

Cal. Rep. Cit. 4, 241.

§ 1029. Indictments against a superior judge. When an indictment is found, or an information filed in a superior court against a judge thereof, a certificate of that fact must be transmitted by the clerk to the governor, who shall thereupon designate and direct a judge of the superior court of another county to preside at the trial of such indictment or information, and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment. En. February 14, 1872. Am'd. 1873-4, 440; 1880, 6.

Cal. Rep. Cit. 81, 569.

Crim. Prac. Act, sec. 310. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 160.

§ 1030. Indictments transmitted to municipal criminal court. (Repealed.) En. February 14, 1872. Rep. 1880, 6.

## CHAPTER VI.

## REMOVAL OF THE ACTION BEFORE TRIAL.

- § 1033. When action may be removed.
- § 1034. Application for removal, how made.
- § 1035. Application, when granted.
- § 1036. Order of removal.
- § 1037. Proceedings on removal, if defendant is in custody.
- § 1038. Proceedings on removal. Transmission of papers.

§ 1033. **When action may be removed.** A criminal action may be removed from the court in which it is pending on application of the defendant, on the ground that a fair and impartial trial cannot be had in the county. En. February 14, 1872. Am'd. 1880, 19; 1887, 61; 1905, 695.

The change consists in the omission of the word "first," after "pending," and of the words "where the action is pending. Second—On the application of the district attorney on the ground that from any cause no jury can be obtained for the trial of the defendant in the county where the action is pending," after "county," the provision relative to a change of the place of trial in a criminal action on application of the district attorney having been held unconstitutional in *People v. Powell*, 87 Cal. 348.—Code Commissioner's Note.

Cal. Rep. Cit. 56, 328; 56, 329; 56, 330; 65, 147; 80, 298; 87, 350; 87, 354; 87, 361; 87, 366; 132, 632.

Crim. Prae. Act, sec. 312. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Change of venue in criminal cases.—Section 397 of the Code of Civil Procedure, providing for the change of the place of trial in civil actions, has no application to criminal cases. The only provisions of law providing for a removal of such cases from one county to another for trial are found in the Penal Code, sections 1033-1038, inclusive.

§ 1034. **Application for removal, how made.** The application for removal must be made in open court, and in writing, verified by the affidavit of the defendant, a copy of which application must be served upon the district attorney at least one day prior to the hearing of the applica-

tion. At the hearing the **district** attorney may serve and file such counter affidavits as he may deem advisable. Whenever the affidavit of the defendant shows that he cannot safely appear in person to make such application because popular prejudice is so great as to endanger his personal safety, and such statement is sustained by other testimony, such application may be made by his attorney, and must be heard and determined in the absence of the defendant, notwithstanding the charge then pending against him be a felony, and he has not at the time of such application been arrested or given bail, or been arraigned, or pleaded or demurred to the indictment or information. En. Feb. 14, 1872. Am'd. 1887, 61; 1905, 695.

The design of the amendment is to conform this section to the amendment to the last section. The change consists in the insertion of the words "for removal," after "application"; in the omission of the words "or of the district attorney, as the case may be," after "defendant"; in the insertion of the word "district," after "the"; in the omission of the words "of the adverse party," after "attorney"; and in the insertion after "application," of the sentence "At the hearing the district attorney may serve and file such counter affidavits as he may deem advisable."—Code Commissioner's Note.

Cal. Rep. Cit. 56, 329; 65, 147.

Crim. Prac. Act, sec. 313. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1857, 71.

§ 1035. **Application, when granted.** If the court be satisfied that the representations of the applicant are true, an order must be made transferring the action to the proper court of some convenient county, free from a like objection. En. February 14, 1872. Am'd. 1887, 62.

Cal. Rep. Cit. 65, 147; 80; 298.

Crim. Prac. Act, sec. 314. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 160.

§ 1036. **Order of removal.** The order of removal must be entered upon the minutes, and the clerk must immediately make out and transmit to the court to which the action is removed a certified copy of the order of removal, record, pleadings, and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses. En. February 14, 1872.

Cal. Rep. Cit. 71, 605; 142, 357.

Crim. Prac. Act, sec. 315. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.



§ 1037. **Proceedings on removal, if defendant is in custody.** If the defendant is in custody, the order must direct his removal, and he must be forthwith removed by the sheriff of the county where he is imprisoned, to the custody of the sheriff of the county to which the action is removed. En. February 14, 1872.

Crim. Prac. Act, sec. 316. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1038. **Proceedings on removal. Transmission of papers.** The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must at any time, upon application of the district attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained. En. February 14, 1872.

Cal. Rep. Cit. 142, 357.

Crim. Prac. Act, sec. 317. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Costs on removal of criminal action chargeable against what county: See Pol. Code, sec. 4345.

## CHAPTER VII.

### THE MODE OF TRIAL.

§ 1041. Issue of fact defined.

§ 1042. How tried.

§ 1043. When presence of defendant is necessary on the trial.

§ 1041. **Issue of fact defined.** An issue of fact arises:

1. Upon a plea of not guilty.
2. Upon a plea of a former conviction or acquittal of the same offense.
3. Upon a plea of once in jeopardy. En. February 14, 1872. Am'd. 1880, 45.

Crim. Prac. Act, sec. 318. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1042. **How tried.** Issues of fact must be tried by jury, unless a trial by jury be waived in criminal cases

not amounting to felony, by the consent of both parties expressed in open court and entered in its minutes. In cases of misdemeanor the jury may consist of twelve, or any number less than twelve upon which the parties may agree in open court. En. February 14, 1872. Am'd. 1880, 5.

Cal. Rep. Cit. 92, 575; 92, 576.

Crim. Prac. Act, sec. 319. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

In cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court: Const. 1879, art I, sec. 7.

Issue of fact defined: Code Civ. Proc., sec. 590.

§ 1043. When presence of defendant is necessary on the trial. If the prosecution be for a felony, the defendant must be personally present at the trial; but if for misdemeanor, the trial may be had in the absence of the defendant; if, however, his presence is necessary for the purpose of identification, the court may, upon application of the district attorney, by an order or warrant, require the personal attendance of the defendant at the trial. En. February 14, 1872. Am'd. 1880, 19.

Cal. Rep. Cit. 57, 351; 59, 358; 68, 634; 118, 448.

Crim. Prac. Act, sec. 230. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 160.

Cal. Rep. Cit. 17, 400; 42, 168.

## CHAPTER VIII.

### FORMATION OF THE TRIAL JURY AND THE CALENDAR OF ISSUES FOR TRIAL.

§ 1046. Formation of trial jury.

§ 1047. Clerk to prepare a calendar.

§ 1048. Order of disposing of issues on the calendar.

§ 1049. Defendant entitled to two days to prepare for trial.

§ 1046. Formation of trial jury. Trial juries for criminal actions are formed in the same manner as trial juries in civil actions. En. February 14, 1872.

Cal. Rep. Cit. 119, 622.

Crim. Prac. Act, sec. 321. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 37, 678; 37, 679; 37, 688; 37, 696; 144, 756.

Impaneling trial juries: Code Civ. Proc., secs. 246, 247.

Formation of jury: Code Civ. Proc., secs. 600-604.

Qualifications and exemptions of jurors: Code Civ. Proc., secs. 198-202.

§ 1047. **Clerk to prepare a calendar.** The clerk must keep a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the indictment or information, specifying opposite the title of each action whether it is for a felony or a misdemeanor, and whether the defendant is in custody or on bail. En. February 14, 1872. Am'd. 1880, 20.

Cal. Rep. Cit. 105, 512.

Crim Prac. Act, sec. 322. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1048. **Order of disposing of issues on the calendar.** The issues on the calendar must be disposed of in the following order, unless for good cause the court shall direct an action to be tried out of its order:

1. Prosecutions for felony, when the defendant is in custody.

2. Prosecutions for misdemeanor when the defendant is in custody.

3. Prosecutions for felony, when the defendant is on bail.

4. Prosecutions for misdemeanor, when the defendant is on bail. En. February 14, 1872. Am'd. 1873-4, 440; 1880, 20.

Crim Prac. Act, sec. 323. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1049. **Defendant entitled to two days to prepare for trial.** After his plea, the defendant is entitled to at least two days to prepare for trial. En. February 14, 1872.

Crim. Prac. Act, sec. 324. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## CHAPTER IX.

### POSTPONEMENT OF THE TRIAL.

§ 1052. Postponement, when and how ordered.

§ 1052. **Postponement, when and how ordered.** When an action is called for trial, or at any time previous there-

to, the court may, upon sufficient cause, direct the trial to be postponed to another day. En. February 14, 1872. Am'd. 1873-4, 441; 1880, 20.

Cal. Rep. Cit. 66, 396; 76, 342; 130, 76; 135, 134.

Crim. Prac. Act, sec. 325. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## TITLE VII.

### OF PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT.

Chapter I. Challenging the Jury, §§ 1055-1089.

II. The Trial, §§ 1093-1131.

III. Conduct of the Jury after Cause is Submitted to Them, §§ 1135-1143.

IV. The Verdict, §§ 1147-1167.

V. Bills of Exception, §§ 1170-1177.

VI. New Trial, §§ 1179-1182.

VII. Arrest of Judgment, §§ 1185-1188.

## CHAPTER I.

### CHALLENGING THE JURY.

- § 1055. Definition and division of challenges.
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- § 1085. Verdict of triers, and its effect. (Repealed.)
- § 1086. Challenges, first by the defendant.
- § 1087. Order of challenges.
- § 1088. Peremptory challenges, when may be taken.
- § 1089. Alternate jurors.

§ 1055. **Definition and division of challenges.** A challenge is an objection made to the trial jurors, and is of two kinds:

1. To the panel;
2. To an individual juror. En. February 14, 1872.

Crim. Prac. Act, sec. 326. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1056. **Defendants cannot sever in challenges.** When several defendants are tried together, they cannot sever their challenges, but must join therein. En. February 14, 1872.

Crim. Prac. Act, sec. 327. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 8, 303.

§ 1057. **Panel defined.** The panel is a list of jurors returned by a sheriff, to serve at a particular court, or for the trial of a particular action. En. February 14, 1872.

Cal. Rep. Cit. 139, 64.

Crim. Prac. Act, sec. 328. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Selecting and returning jurors: Code Civ. Proc., secs. 204-211.

Drawing jurors: Code Civ. Proc., secs. 214-220.

Summoning jurors: Code Civ. Proc., secs. 225-228.

§ 1058. **Challenge to the jury defined.** A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party. En. February 14, 1872.

Crim. Prac. Act, sec. 329. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1059. **Upon what founded.** A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury in civil actions, or on the intentional omission of the sheriff to summon one or more of the jurors drawn. En. February 14, 1872.

Cal. Rep. Cit. 64, 382; 73, 360; 97, 176; 134, 529; 145, 295.

Crim. Prac. Act, sec. 330. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 1, 383.

§ 1060. **When and how taken.** A challenge to the panel must be taken before a juror is sworn, and must be in writing or be noted by the phonographic reporter, and must plainly and distinctly state the facts constituting the ground of challenge. En. February 14, 1872.

Cal. Rep. Cit. 127, 380; 134, 528.

Crim. Prac. Act, sec. 331. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 1, 383.

§ 1061. **Exception, if sufficiency of the challenge be denied.** If the sufficiency of the facts alleged as ground of the challenge is denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered on the minutes of the court, or of the phonographic reporter, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true. En. February 14, 1872.

Cal. Rep. Cit. 61, 549.

Crim. Prac. Act, sec. 332. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 1, 383.

Crim. Prac. Act, sec. 333. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Compare with post, sec. 1077.

Exception to ruling: Post, sec. 1170.

§ 1062. **If exception overruled, court may allow denial, etc.** If, on the exception, the court finds the challenge

sufficient, it may, if justice requires it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception is allowed, the court may, in like manner, permit an amendment of the challenge. En. February 14, 1872.

Cal. Rep. Cit. 61, 549.

Crim. Prac. Act, sec. 334. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1063. **Denial of challenge, how made, and trial thereof.** If the challenge is denied, the denial may be oral, and must be entered on the minutes of the court, or of the phonographic reporter, and the court must proceed to try the question of fact; and upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge. En. February 14, 1872.

Crim. Prac. Act, sec. 335. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 336. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1064. **Challenge for bias in summoning officer.** When the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner, as if made to a juror. En. February 14, 1872.

Cal. Rep. Cit. 49, 177; 49, 178; 76, 346; 95, 427; 101, 283; 108, 583; 116, 195; 122, 236; 127, 380; 134, 529; 134, 534; 134, 544.

Crim. Prac. Act, sec. 337. En. April 20, 1850. Rep. 1851, 290. En. 1851, 312.

Cal. Rep. Cit. 40, 592.

§ 1065. **Proceedings, if challenge allowed.** If, either upon an exception to the challenge or a denial of the facts, the challenge is allowed, the court must discharge the jury

so far as the trial in question is concerned. If it is disallowed, the court must direct the jury to be impaneled.

En. February 14, 1872. Am'd. 1880, 20.

Cal. Rep. Cit. 73, 360.

Crim. Prac. Act, sec. 338. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1066. **Defendant to be informed of his right to challenge.** Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intends to challenge an individual juror he must do so when the jurors appears, and before he is sworn. En. February 14, 1872.

Cal. Rep. Cit. 58, 266; 76, 346; 88, 488; 88, 489; 92, 596; 102, 231; 103, 510.

Crim. Prac. Act, sec. 339. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1067. **Kinds of challenges to individual juror.** A challenge to an individual juror is either:

1. Peremptory; or,

2. For cause. En. February 14, 1872.

Crim. Prac. Act, sec. 340. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 37, 678.

§ 1068. **Challenge, when taken.** It must be taken when the juror appears, and before he is sworn to try the cause; but the court may for cause permit it to be taken after the juror is sworn, and before the jury is completed. En. February 14, 1872.

Cal. Rep. Cit. 47, 122; 53, 577; 76, 347; 87, 120; 105, 338; 116, 197; 116, 198; 123, 488; 139, 216.

Crim. Prac. Act, sec. 341. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 4, 200; 16, 131; 24, 13; 37, 678; 37, 679; 37, 680; 37, 690; 37, 693.

§ 1069. **Peremptory challenge, what, and how taken.** A peremptory challenge can be taken by either party, and



may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him. En. February 14, 1872.

Crim. Prac. Act, sec. 342. En. April 20, 1850. Am'd. 1850, 332. Rep. 1851, 290. En. 1851, 212.

§ 1070. **Number of peremptory challenges.** If the offense charged be punishable with death, or with imprisonment in the state prison for life, the defendant is entitled to twenty and the state to ten peremptory challenges. On a trial for any other offense, the defendant is entitled to ten and the state to five peremptory challenges. En. February 14, 1872. Am'd. 1873-4, 441.

Cal. Rep. Cit. 59, 441; 61, 137; 61, 436; 109, 259; 132, 94; 134, 454.

Crim. Prac. Act, sec. 343. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 8, 303.

§ 1071. **Definition and kinds of challenge, for cause.** A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either—

1. General—that the juror is disqualified from serving in any case; or,

2. Particular—that he is disqualified from serving in the action on trial. En. February 14, 1872.

Cal. Rep. Cit. 70, 11.

Crim. Prac. Act, sec. 344. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1072. **General causes of challenge.** General causes of challenge are—

1. A conviction for felony.

2. A want of any of the qualifications prescribed by law to render a person a competent juror.

3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror. En. February 14, 1872.

Cal. Rep. Cit. 59, 354; 61, 553; 119, 621; 123, 487.

Crim. Prac. Act, sec. 345. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Qualifications required of jurors: Code Civ. Proc., sec. 198. See Const., art XX, sec. 11.

Exemptions: Code Civ. Proc., sec. 200.

§ 1073. Particular cause of challenge. Particular causes of challenge are of two kinds:

First—For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.

Second—For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party, which is known in this code as actual bias. En. February 14, 1872. Am'd. 1873-4, 441.

Cal. Rep. Cit. 49, 168; 49, 177; 49, 183; 62, 379; 96, 127; 100, 229. Subd. 1—61, 553. Subd. 2—116, 195; 123, 486.

Crim. Prac. Act, sec. 346. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1868, 704.

Cal. Rep. Cit. 49, 183.

Implied bias: Post, sec. 1074.

Actual bias: Post, sec. 1076.

§ 1074. Ground of challenge for implied bias. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages.

3. Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution.

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information.

5. Having served on a trial jury which has tried another person for the offense charged.

6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it.

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

8. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror. En. February 14, 1872. Am'd. 1873-4, 442; 1880, 20.

Cal. Rep. Cit. 49, 169; 49, 183; 59, 355; 61, 549; 61, 553; 62, 380; 76, 346; 117, 666. Subd. 4—116, 509; 119, 621. Subd. 8—65, 148; 137, 317.

Crim. Prac. Act, sec. 347. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 16, 130; 16, 132; 37, 259; 37, 279; 41, 39; 41, 430.

Formed or expressed an unqualified opinion.—Prior to the amendment of section 1074, adopted in 1874, the section included, as an additional ground of challenge for implied bias, the following: "Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged."

§ 1075. **Exemption not a ground of challenge.** An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted. En. February 14, 1872.

Cal. Rep. Cit. 123, 486.

Crim. Prac. Act, sec. 348. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Exemption from jury duty: See Code Civ. Proc., sec. 200.

§ 1076. **Causes of<sup>a</sup> challenge, how stated.** In a challenge for implied bias, one or more of the causes stated in section one thousand and seventy-four must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section one thousand and seventy-three must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety; provided it appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him. The challenge may be oral, but must be entered in the minutes of the court or of the phonographic reporter. En. February 14, 1872. Am'd. 1873-4, 443.

Cal. Rep. Cit. 59, 354; 61, 549; 61, 553; 100, 229; 100, 230; 100, 231; 105, 512; 108, 583; 124, 317; 125, 46; 125, 47; 139, 429; 140, 271; 142, 445; 145, 298; 147, 550; 147, 552.

Crim. Prac. Act, sec. 349. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 7, 144; 16, 130; 37, 259.

§ 1077. **Exceptions to challenge and denial thereof.** The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon as are prescribed in section one thousand and sixty-one, except that if the exception be allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge. En. February 14, 1872.

Cal. Rep. Cit. 61, 549.

Crim. Prac. Act, sec. 350. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See ante, secs. 1068, 1073, 1076.

Compare with ante, secs. 1061, 1062.

Exceptions to court's ruling: Post, sec. 1170.

§ 1078. **Challenge, how tried.** If the facts are denied, the challenge must be tried by the court. En. February 14, 1872. Am'd. 1873-4, 443.

Cal. Rep. Cit. 49, 183.

Crim. Prac. Act, sec. 351. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1079. **Triers, how appointed. Majority may decide.** (Repealed). En. February 14, 1872. Rep. 1873-4, 443.

Cal. Rep. Cit. 68, 180.

Crim. Prac. Act, sec. 352. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1080. **Oath of triers.** (Repealed.) En. February 14, 1872. Rep. 1873-4, 443.

Crim. Prac. Act, sec. 353. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1081. **Juror challenged may be examined as a witness.** Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry. En. February 14, 1872.

Crim. Prac. Act, sec. 354. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1082. **Rules of evidence on trial of challenge.** Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge. En. February 14, 1872.

Crim. Prac. Act, sec. 355. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1083. **Decision of court to be entered.** The court must allow or disallow the challenge, and its decision must be entered in the minutes of the court. En. February 14, 1872. Am'd. 1873-4, 443.

Crim. Prac. Act, sec. 356. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See ante, sec. 1076, and post, sec. 1170.

§ 1084. **Instructions on trial for actual bias.** (Repealed.) En. February 14, 1872. Rep. 1873-4, 444.

Crim. Prac. Act, sec. 357. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1868, 704.

§ 1085. **Verdict of triers and its effect.** (Repealed.) En. February 14, 1872. Rep. 1873-4, 444.

Crim. Prac. Act, sec. 358. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1086. **Challenges, first by the defendant.** All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the people, and each party must exhaust all his challenges before the other begins. En. February 14, 1872.

Crim. Prac. Act, sec. 359. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 6, 409.

§ 1087. **Order of challenges.** The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel.
2. To an individual juror, for a general disqualification.
3. To an individual juror, for an implied bias.
4. To an individual juror, for an actual bias. En. February 14, 1872.

Crim. Prac. Act, sec. 360. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 16, 133.

§ 1088. **Peremptory challenges, when may be taken.** If all challenges on both sides are disallowed, either party, first the people and then the defendant, may take a peremptory challenge, unless the parties' peremptory challenges are exhausted. En. February 14, 1872.

Cal. Rep. Cit. 48, 559; 65, 148; 96, 318.

Crim. Prac. Act, sec. 361. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1089. **Alternate jurors.** Whenever, in the opinion of a judge of a superior court about to try a defendant against whom has been filed any indictment or information for a felony, the trial is likely to be a protracted one, the court may cause an entry to that effect to be made in the minutes of the court, and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or two additional jurors, in its discretion, to be known as "alternate jurors." Such jurors must be drawn from the same source, and in the same manner, and have the same qualifications as the jurors already sworn, and be subject to the same examination and challenges; provided, that the prosecution shall be entitled to one, and the defendant to two, peremptory challenges to such alternate jurors. Such alternate jurors shall be seated near, with equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and must attend at all times upon the trial of the cause in company with the other jurors; and for a failure so to do are liable to be punished for contempt. They shall obey the orders of and be bound by the admonition of the court upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff during the trial of the cause, such alternate jurors shall also be kept in confinement with the other jurors; and except, as hereinafter provided, shall be discharged upon the final submission of the case to the jury. If, before the final submission of the case, a juror die, or become ill, so as to be unable to perform his duty, the court may order him to be discharged and draw the name of an alternate, who shall then take his place in the jury-box, and be subject to the same rules and regulations as though he had been selected as one of the original jurors. En. Stats. 1895, 280.

## CHAPTER II.

## THE TRIAL.

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§ 1093. Order of trial. The jury having been impaneled and sworn, the trial must proceed in the following order, unless otherwise directed by the court:



1. If the indictment or information be for felony, the clerk must read it, and state the plea of the defendant to the jury, and in cases where it charges a previous conviction, and the defendant has confessed the same, the clerk in reading it shall omit therefrom all that relates to such previous conviction. In all other cases this formality may be dispensed with.

2. The district attorney, or other counsel for the people, must open the cause and offer the evidence in support of the charge.

3. The defendant or his counsel may then open the defense, and offer his evidence in support thereof.

4. The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the district attorney, or other counsel for the people, and counsel for the defendant, may argue the case to the court and jury; the district attorney, or other counsel for the people, opening the argument and having the right to close.

6. The judge may then charge the jury, and must do so on any points pertinent to the issue, if requested by either party; and he may state the testimony and declare the law. If the charge be not given in writing, it must be taken down by the phonographic reporter. En. February 14, 1872. Am'd. 1873-4, 444; 1880, 21.

Cal. Rep. Cit. 45, 652; 46, 117; 53, 494; 55, 298; 57, 99; 57, 317; 57, 560; 58, 269; 65, 297; 65, 298; 66, 456; 66, 457; 73, 447; 73, 448; 73, 451; 73, 452; 73, 517; 73, 549; 73, 550; 76, 282; 76, 348; 85, 570; 88, 141; 103, 571; 105, 502; 110, 43; 116, 687; 131, 653. Subd. 1—84, 450; 88, 117; 110, 43; 116, 686; 118, 390; 143, 601; 145, 613. Subd. 2—65, 127. Subd. 3—76, 349. Subd. 5—76, 349. Subd. 6—53, 575; 88, 175; 88, 177; 76, 59; 118, 329.

Crim. Prac. Act, sec. 362. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1854, 80; 1855, 275.

Cal. Rep. Cit. 26, 79; 32, 43; 43, 153; 43, 349; 53, 573.

Number of counsel: Post, sec. 1095.

§ 1094. When order of trial may be departed from. When the state of the pleadings requires it, or in any other case, for good reasons, and in the sound discretion of the court, the order prescribed in the last section may departed from. En. February 14, 1872.

Cal. Rep. Cit. 85, 570; 103, 571.

Crim. Prac. Act, sec. 363. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1854, 81.

Cal. Rep. Cit. 43, 153.

§ 1095. Number of counsel who may argue the case. If the indictment or information be for an offense punishable with death, two counsel on each side may argue the cause to the jury. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side. En. February 14, 1872. Am'd. 1880, 21.

Cal. Rep. Cit. 48, 238; 53, 567; 55, 298; 65, 127; 76, 348; 123, 69.

Crim. Prac. Act, sec. 364. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 43, 152; 43, 153.

The order of argument is subject to the discretion of the court: See ante, sec. 1094.

§ 1096. Defendant presumed innocent. Reasonable doubt. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal. En. February 14, 1872.

Cal. Rep. Cit. 58, 268; 58, 269; 71, 8; 84, 33; 84, 456; 122, 141; 135, 445.

Crim. Prac. Act, sec. 365. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Burden of proof, when shifts: See post, sec. 1105.

§ 1097. Reasonable doubt as to degree convicts only of lowest. When it appears that the defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only. En. February 14, 1872.

Cal. Rep. Cit. 58, 268; 58, 269; 68, 180; 71, 8; 118, 270.

Crim. Prac. Act, sec. 366. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1098. **Separate trials.** When two or more defendants are jointly charged with a felony, any defendant requiring it must be tried separately. In other cases the defendants jointly charged may be tried separately or jointly in the discretion of the court. En. February 14 1872. Am'd. 1880, 22.

Cal. Rep. Cit. 121, 162.

Crim. Prac. Act, sec. 367. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 8, 303.

§ 1099. **Discharging defendant that he may be a witness.** When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the district attorney, direct any defendant to be discharged, that he may be a witness for the people. En. February 14, 1872. Am'd. 1880, 22.

Cal. Rep. Cit. 48, 253; 70, 55; 70, 56; 110, 611.

Crim. Prac. Act, sec. 368. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 24, 46; 24, 47; 24, 48; 24, 49; 44, 539.

See post, sec. 1101.

§ 1100. **Same.** When two or more persons are included in the same indictment or information, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged before the evidence is closed, that he may be a witness for his codefendant. En. February 14, 1872. Am'd. 1880, 22.

Cal. Rep. Cit. 70, 55; 70, 56.

Crim. Prac. Act, sec. 369. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1101. **Effect of such discharge.** The order mentioned in the last two sections is an acquittal of the defendant

discharged, and is a bar to another prosecution for the same offense. En. February 14, 1872.

Cal. Rep. Cit. 48, 253; 70, 55.

Crim. Prac. Act, sec. 370. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 48.

Jeopardy: Ante, sec. 687.

§ 1102. **Rules of evidence in civil applicable to criminal cases.** The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this code. En. February 14, 1872.

Cal. Rep. Cit. 57, 568; 57, 573; 58, 214; 64, 259; 98, 131; 104, 487; 120, 666; 132, 201; 132, 263; 142, 294.

Evidence in civil cases: Code Civ. Proc., pt. IV.

Reporter's notes as evidence: See Code Civ. Proc., sec. 273.

Act authorizing appointment of interpreter: See post, Appendix, title Interpreters.

§ 1103. **Evidence on trial for treason.** Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act, or upon confession in open court; nor can evidence be admitted of an overt act not expressly charged in the indictment or information; nor can the defendant be convicted unless one or more overt acts be expressly alleged therein. En. February 14, 1872. Am'd. 1880, 22.

Cal. Rep. Cit. 68, 180.

Crim. Prac. Act, sec. 371. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 372. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Treason: Const. U. S., art. III, sec. 3, subd. 1; Const. Cal., art. I, sec. 20; Code Civ. Proc., sec. 1968.

§ 1103a. **Perjury, how proved.** Perjury must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances. En. Stats. 1905, 696.

This section is composed of matter taken from section 1968 of the Code of Civil Procedure.—Code Commissioner's Note.

§ 1104. **Evidence on trial for conspiracy.** Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence. En. February 14, 1872. Am'd. 1880, 22.

Cal. Rep. Cit. 68, 180.

Crim. Prae. Act, sec. 273. En. April 20, 1850. Rep. 1851, 290. En. 1851. 212.

§ 1105. **When burden of proof shifts in trials for murder.** Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable. En. February 14, 1872.

Cal. Rep. Cit. 49, 7; 49, 611; 58, 251; 61, 394; 61, 395; 61, 396; 61, 528; 61, 529; 65, 103; 67, 428; 69, 604; 71, 4; 71, 7; 71, 8; 71, 9; 80, 45; 80, 163; 80, 304; 83, 382; 86, 146; 86, 149; 86, 227; 88, 239; 88, 423; 88, 424; 89, 499; 89, 500; 93, 443; 94, 47; 98, 653; 104, 378; 105, 34; 115, 246; 118, 271; 122, 178; 128, 95; 131, 655; 137, 582.

§ 1106. **Evidence on a trial for bigamy.** Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when the second marriage took place out of this state, proof of that fact, accompanied with proof of cohabitation thereafter in this state, is sufficient to sustain the charge. En. February 14, 1872.

Cal. Rep. Cit. 71, 265; 99, 289; 130, 489.

Bigamy defined: Ante, sec. 281.

§ 1107. **Evidence upon a trial for forging bank-bills, etc.** Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank,

or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by general reputation; and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited. En. February 14, 1872.

Forgery and counterfeiting: See ante, sec. 470.

**§ 1108. Evidence upon trial for abortion and seduction.**

Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of eighteen years, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offense was committed, unless she is corroborated by other evidence. En. February 14, 1872. Am'd. 1905, 696.

The amendment consists in the substitution of the word "eighteen" for "twenty-five." The purpose is to conform the section to the provisions of section 266.—Code Commissioner's Note.

Cal. Rep. Cit. 68, 180; 118, 674.

**§ 1109. Evidence on a trial for selling, etc., lottery tickets.** Upon a trial for the violation of any of the provisions of chapter nine, title nine, part one of this code, it is not necessary to prove the existence of any lottery in which any lottery ticket purports to have been issued, or to prove the actual signing of any such ticket or share, or pretended ticket or share, of any pretended lottery, nor that any lottery ticket, share, or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases proof of the sale, furnishing, bartering, or procuring of any ticket, share, or interest therein, or of any instrument purporting to be a ticket, or part or share of any such ticket, is evidence that such share or interest was signed and issued according to the purport thereof. En. February 14, 1872.

For chapter IX, title IX, part I, above referred to, see ante, secs. 319, et seq.

**§ 1110. Evidence of false pretenses.** Upon a trial for having, with an intent to cheat or defraud another design-

edly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any labor, money, or property, whether real or personal, or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language unaccompanied by a false token or writing, unless the pretense, or some note or memorandum thereof is in writing, subscribed by or in the handwriting of the defendant, or unless the pretense is proven by the testimony of two witnesses, or that of one witness and corroborating circumstances; but this section does not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property. En. February 14, 1872. Am'd. 1905, 696.

The amendment consists in the insertion of the word "labor" before "money," and in the substitution of the words "or property, whether real or personal," in place of "personal property," thus conforming the section to the amendment to section 532.—Code Commissioner's Note.

Cal. Rep. Cit. 68, 180; 70, 118; 98, 663; 102, 564; 127, 207; 135, 272.

Crim. Prac. Act, sec. 376. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1862, 53.

§ 1111. **Conviction on testimony of accomplice.** A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, if it merely shows the commission of the offense, or the circumstances thereof. En. February 14, 1872.

Cal. Rep. Cit. 49, 630; 50, 450; 50, 481; 53, 602; 53, 607; 65, 307; 68, 180; 69, 13; 71, 19; 72, 460; 72, 461; 73, 348; 73, 349; 73, 350; 73, 351; 73, 353; 84, 481; 89, 498; 96, 181; 98, 218; 98, 280; 99, 576; 111, 14; 111, 15; 114, 573; 114, 634; 121, 557; 122, 502; 123, 406; 123, 411; 134, 310; 135, 272; 138, 341; 139, 720; 139, 727; 141, 232; 143, 265; 144, 472.

Crim. Prac. Act, sec. 375. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 39, 404.



§ 1112. **Proceedings, if evidence show higher offense than charged.** (Repealed.) En. February 14, 1872. Rep. 1880, 6.

Crim. Prac. Act, sec. 379. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 380. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1113. **Discharge jury for lack of jurisdiction, etc.** The court may direct the jury to be discharged, where it appears that it has not jurisdiction of the offense, or that the facts charged do not constitute an offense punishable by law. En. February 14, 1872. Am'd. 1880, 22.

Crim. Prac. Act, sec. 381. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Jurisdiction generally: See ante, secs. 777 et seq.

§ 1114. **Proceedings, if jury discharged for want of jurisdiction of offense committed out of the state.** If the jury be discharged because the court has not jurisdiction of the offense charged, and it appear that it was committed out of the jurisdiction of this state, the defendant must be discharged. En. February 14, 1872. Am'd. 1880, 22.

Crim. Prac. Act, sec. 382. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 27, 342.

Crime committed out of state: Ante sec. 27, subd. 3.

Jurisdiction: See ante, secs. 778, 793, 794.

§ 1115. **Proceedings in such case, when offense committed in the state.** If the offense was committed within the exclusive jurisdiction of another county of this state, the court must direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest; or if the offense is a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county; and, if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, to be mentioned in the undertaking; and the clerk must forthwith transmit a certified copy of the



indictment or information, and of all the papers filed in the action, to the district attorney of the proper county, the expense of which transmission is chargeable to that county. En. February 14, 1872. Am'd. 1880, 22.

Crim. Prac. Act, sec. 383. En. April 20, 1850. Rep. 1851, 290. En. 1851. 212.

Cal. Rep. Cit. 27, 342.

Crim. Prac. Act, sec. 384. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1116. **Same.** If the defendant is not arrested on a warrant from the proper county, as provided in section one thousand one hundred and fifteen, he must be discharged from custody, or his bail in the action is exonerated, or money deposited instead of bail must be refunded, as the case may be, and the sureties in the undertaking, as mentioned in that section, must be discharged. If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate. En. February 14, 1872.

Crim. Prac. Act, sec. 385. En. April 20, 1850. Rep. 1851, 290. En. 1851. 212.

Crim. Prac. Act, sec. 386. En. April 20, 1850. Rep. 1851, 290. En. 1851. 212.

Cal. Rep. Cit. 1, 385.

§ 1117. **Proceedings, if jury discharged because the facts do not constitute an offense.** If the jury is discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated; or if he has deposited money instead of bail, that the money be refunded to him, unless in its opinion a new indictment or information can be framed upon which the defendant can be legally convicted, in which case it may direct the district attorney to file a new information, or (if the defendant has not been committed by a magistrate) direct that the case be submitted to the same or another grand jury; and the same proceedings must be had thereon as are prescribed in section nine hundred and ninety-eight; provided, that after such order or submission the defendant may be examined

before a magistrate, and discharged or committed by him as in other cases. En. February 14, 1872. Am'd. 1880, 23.

Cal. Rep. Cit. 64, 263; 118, 27.

Crim. Prac. Act, sec. 387. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 388. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1118. When evidence on either side is closed, court may advise jury to acquit. If, at any time after the evidence on either side is closed, the court deems it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury are not bound by the advice. En. February 14, 1872.

Cal. Rep. Cit. 70, 18; 97, 401; 105, 266; 114, 68; 118, 28; 124, 553; 132, 501; 143, 691; 143, 693; 143, 694; 143, 695; 143, 696; 143, 698; 145, 739.

Crim. Prac. Act, sec. 389. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1119. View of premises, when ordered, and how conducted. When, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which must be shown to them by a person appointed by the court for that purpose; and the sheriff must be sworn to suffer no person to speak or communicate with the jury, nor to do so himself, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time. En. February 14, 1872.

Cal. Rep. Cit. 53, 61; 68, 625; 68, 626; 68, 630; 68, 633; 68, 635; 71, 606; 80, 539; 122, 183; 137, 548.

Crim. Prac. Act, sec. 390. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1120. Knowledge of juror to be declared in court, and he to be sworn as a witness. If a juror has any personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial. If, during the retirement of the jury, a juror declare a fact which could be evidence in the cause, as of his own knowl-

edge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties. En. February 14, 1872.

Crim. Prac. Act, sec. 392. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1121. **Jurors, separation of, during trial.** The jurors sworn to try an action may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them or communicate with them, nor to do so himself, on any subject connected with the trial, and to return them into court at the next meeting thereof. En. February 14, 1872. Am'd. 1880, 23.

Cal. Rep. Cit. 96, 179; 116, 297; 117, 657; 122, 139.

Crim. Prac. Act, sec. 393. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 32, 43.

§ 1122. **Jury, at each adjournment, must be admonished, etc.** The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them. En. February 14, 1872.

Cal. Rep. Cit. 84, 606; 116, 297; 117, 657.

Crim. Prac. Act, sec. 394. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1123. **Juror unable to perform his duties, proceedings.** If, before the conclusion of the trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterwards impaneled. En. February 14, 1872.

Cal. Rep. Cit. 64, 61; 72, 492; 96, 128; 119, 332; 135, 463; 135, 465.

Crim. Prac. Act, sec. 395. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Discharge of jury: See post, sec. 1139.

§ 1124. **Court to decide questions of law arising during trial.** The court must decide all questions of law which arise in the course of a trial. En. February 14, 1872.

Crim. Prac. Act, sec. 396. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1125. **On indictment for libel, jury to determine law and fact.** On a trial for libel, the jury has the right to determine the law and the fact. En. February 14, 1872. Am'd. 1880, 23,

Crim. Prac. Act, sec. 397. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Same principle: Const. 1879, art. I, sec. 9.

§ 1126. **In all other cases court to decide questions of law.** On a trial for any other offense than libel, questions of law are to be decided by the court, questions of fact by the jury; and, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court. En. February 14, 1872. Am'd. 1880, 23.

Cal. Rep. Cit. 113, 572.

Crim. Prac. Act, sec. 398. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

In libel: See Const. Cal. 1879, art. I, sec. 9. See ante, sec. 1102.

§ 1127. **Charging the jury.** In charging the jury the court must state to them all matters of law necessary for their information. All instructions given (except such as might incidentally be given during the admission of evidence) shall be in writing, unless both parties request the giving of an

oral instruction, or consent thereto, and when so given orally, all instructions must be taken down by the phonographic reporter. Either party may present to the court any written charge, and request that it be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused, the court must indorse and sign its decision. If part be given and part refused, the court must distinguish, showing by the indorsement what part of the charge was given and what part refused. En. February 14, 1872. Am'd. 1897, 184.

Cal. Rep. Cit. 58, 252; 69, 237; 77, 181; 78, 2; 93, 660; 105, 672; 114, 557; 127, 547; 131, 653; 135, 445; 139, 11.

Crim. Prac. Act, sec. 399. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 32, 43.

Crim. Prac. Act, sec. 400. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 44, 599.

Crim. Prac. Act, sec. 401. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 44, 599.

Instructions: See ante, sec. 1093.

Charging jurors upon questions of fact: Ante, sec. 1093, subd. 6.

Oral instructions: Ante, sec. 1093, subd. 6.

Presumption of innocence: Ante, sec. 1096.

§ 1128. **Jury may decide in court, or retire in custody of officers.** After hearing the charge, the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, an officer must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor to do so himself, unless by order of the court, or to ask them whether they have agreed upon a verdict, and to re-

turn them into court when they have so agreed, or when ordered by the court. En. February 14, 1872.

Cal. Rep. Cit. 111, 85; 143, 210; 143, 212.

Crim. Prac. Act, sec. 402. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 21, 338.

Oath of officer in charge of jury: See post, sec. 1440.

**§ 1129. Defendant appearing for trial may be committed.** When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court, and he must be committed and held in custody accordingly. En. February 14, 1872.

Cal. Rep. Cit. 59, 676.

Crim. Prac. Act, sec. 403. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1130. If district attorney fails to attend, court may appoint.** If the district attorney fails to attend at the trial, the court must appoint some attorney at law to perform the duties of the district attorney on such trial. En. February 14, 1872.

Cal. Rep. Cit. 98, 142; 135, 414; 135, 415.

District attorney, duties of. Pol. Code, secs. 4256-4258.

Argument: Ante, sec. 1093, subd. 5.

Number of counsel: Ante, sec. 1095.

Order of argument: Ante, sec. 1093, subd. 5.

**§ 1131. Allegations of larceny or embezzlement, when sustained.** Upon a trial for larceny or embezzlement of money, bank-notes, certificates of stock, or valuable securities, the allegation of the indictment or information, so far as regards the description of the property, is sustained, if the offender be proved to have embezzled or stolen any money, bank-notes, certificates of stock, or valuable security, al-

though the particular species of coin or other money, or the number, denomination, or kind of bank-notes, certificates of stock, or valuable security, be not proved; and upon a trial for embezzlement, if the offender be proved to have embezzled any piece of coin or other money, any bank-note, certificate of stock, or valuable security, although such piece of coin or other money, or such bank-note, certificate of stock, or valuable security, may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly. En. Stats. 1873-4, 445. Am'd. 1880, 24.

Cal. Rep. Cit. 56, 80; 66, 277; 69, 237; 108, 541.

### CHAPTER III.

#### CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

- § 1135. Room, etc., for jury after retirement.
- § 1136. Juries to be supplied with food and lodging.
- § 1137. What papers the jury may take with them.
- § 1138. After retirement, may return into court for information.
- § 1139. If juror after retirement becomes sick, etc.
- § 1140. Not to be discharged unless there is no probability that they can agree.
- § 1141. When discharged without verdict, cause to be again tried.
- § 1142. Court may adjourn during absence, but deemed open.
- § 1143. Fees of jurors. Payment of same.

§ 1135. **Room, etc., for jury after retirement.** A room must be provided by the supervisors of each county for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights, and stationery. If the supervisors neglect, the court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge. En. February 14, 1872.

Cal. Rep. Cit. 143, 210.

Crim. Prac. Act, sec. 404. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 160.

Jury expenses. See Pol. Code, sec. 4344, subd. 3.

§ 1136. **Juries to be supplied with food and lodging.** While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court must direct the sheriff to provide the jury with suitable and sufficient food and lodging, or other reasonable necessities. And the auditor, upon the order of the court, shall draw his warrant for the expenses so incurred, and the same shall be paid by the treasurer of the county, or city and county, out of the general fund. En. February 14, 1872. Am'd. 1901, 654.

Cal. Rep. Cit. 61, 186; 61, 188; 78, 338; 111, 85; 143, 210.

Crim. Prac. Act, sec. 405. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1137. **What papers the jury may take with them.** Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them the written instructions given, and notes of the testimony or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person. En. February 14, 1872.

Cal. Rep. Cit. 61, 551; 61, 553; 74, 485; 120, 111; 146, 481; 146, 482.

Crim. Prac. Act, sec. 406. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 407. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1138. **After retirement, may return into court for information.** After the jury have retired for deliberation, if



there be any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of, or after notice to, the district attorney, and the defendant or his counsel, or after they have been called. En. February 14, 1872. Am'd. 1873-4, 445.

Cal. Rep. Cit. 53, 575; 65, 569; 111, 85.

Crim. Prac. Act, sec. 408. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 29, 627; 29, 629; 37, 276.

§ 1139. **If juror after retirement becomes sick, etc.** If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged. En. February 14, 1872.

Crim. Prac. Act, sec. 409. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Discharge of jury: See ante, sec. 1123.

§ 1140. **Not to be discharged unless there is no probability that they can agree.** Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict and rendered it in open court, unless by consent of both parties, entered upon the minutes, or unless, at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree. En. February 14, 1872.

Cal. Rep. Cit. 76, 59; 97, 401; 100, 142.

Crim. Prac. Act, sec. 410. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1141. **When discharged without verdict, cause to be again tried.** In all cases where a jury is discharged or

prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged during the progress of the trial, or after the cause is submitted to them, the cause may be again tried. En. February 14, 1872. Am'd. 1880, 24.

Crim. Prac. Act, sec. 411. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

New trial: See post, sec. 1181.

Jeopardy: See ante, sec. 687.

§ 1142. **Court may adjourn during absence, but deemed open.** While the jury are absent, the court may adjourn from time to time, as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. En. February 12, 1872.

Cal. Rep. Cit. 65, 621.

Crim. Prac. Act, sec. 412. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1143. **Fees of jurors. Payment of same.** The fees of jurors in the superior courts of the state, in criminal cases, shall be two dollars, in lawful money of the United States, for each day's attendance, and mileage, to be computed at the rate of fifteen cents per mile for each mile necessarily traveled in attending court, in going only. Such fees and mileage shall be paid by the treasurer of the county, or city and county, in which the juror's services were rendered, out of the general fund of said county, or city and county, upon warrants drawn by the county auditor upon the written order of the judge of the court in which said juror was in attendance, and the treasurer of said county, or city and county, shall pay said warrants. The board of supervisors of each county, or city and county, is hereby directed to make suitable appropriation for the pay-

ment of the fees herein provided for. En. February 14, 1872. Rep. 1880, 6. En. Stats. 1901, 290.

Cal. Rep. Cit. 138, 267; 138, 269; 138, 271; 138, 273.

Crim Prac. Act, sec. 413. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## CHAPTER IV.

### THE VERDICT.

- § 1147. Return of jury.
- § 1148. Appearance of defendant.
- § 1149. Manner of taking verdict.
- § 1150. Verdict may be general or special.
- § 1151. General verdict.
- § 1152. Special verdict.
- § 1153. Special verdict, how rendered.
- § 1154. Form of special verdict.
- § 1155. Judgment on special verdict.
- § 1156. When special verdict defective, new trial to be ordered.
- § 1157. Jury to find degree of crime.
- § 1158. Jury may find upon charge of previous conviction.
- § 1159. Jury may convict of lesser offense, or of attempt.
- § 1160. Verdict as to some defendants, new trial as to others.
- § 1161. Court may direct a reconsideration of the verdict.
- § 1162. When judgment may be given on informal verdict.
- § 1163. Polling the jury.
- § 1164. Recording the verdict.
- § 1165. Defendant, when to be discharged.
- § 1166. Proceedings upon conviction or special verdict.
- § 1167. Proceedings on acquittal on ground of insanity.

§ 1147. **Return of jury.** When the jury have agreed upon the verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the action may be again tried. En. February 14, 1872. Am'd. 1905, 697.

The change consists in the omission of the words "at the same or another term," after "tried," because there are now no terms of court.—Code Commissioner's Note.

Cal. Rep. Cit. 57, 100; 62, 519; 62, 520.

Crim. Prac. Act, sec. 414. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 44, 541; 62, 520.

§ 1148. **Appearance of defendant.** If charged with a felony, the defendant must, before the verdict is received, appear in person. If for a misdemeanor, the verdict may be rendered in his absence. En. February 14, 1872. Am'd. 1880, 24.

Cal. Rep. Cit. 49, 42; 57, 352; 59, 358; 70, 472; 118, 449.

Crim. Prac. Act, sec. 415. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 33, 100; 42, 168.

Judgment in defendant's presence: See post, sec. 1193.

§ 1149. **Manner of taking verdict.** When the jury appear, they must be asked by the court, or clerk, whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must, on being required, declare the same. En. February 14, 1872.

Cal. Rep. Cit. 62, 519; 94, 119.

Crim. Prac. Act, sec. 416. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1150. **Verdict may be general or special.** The jury may render a general verdict, or, when they are in doubt as to the legal effect of the facts proved, they may, except upon a trial for libel, find a special verdict. En. February 14, 1872. Am'd. 1880, 24.

Crim. Prac. Act, sec. 417. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1151. **General verdict.** A general verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people" or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the

ground of variance between the indictment and the proof, the verdict must be "not guilty by reason of variance between indictment and proof." En. February 14, 1872. Am'd. 1873-4, 446.

Cal. Rep. Cit. 51, 279; 65, 446; 68, 181; 73, 346; 84, 473; 87, 283; 134, 308.

Crim. Prac. Act, sec. 418. En. April 20, 1850. Rep. 1851, 190. En. 1851, 212.

Cal. Rep. Cit. 31, 453; 31, 454.

§ 1152. **Special verdict.** A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact as established by the evidence, and not the evidence to prove them, and these conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them. En. February 14, 1872.

Crim. Prac. Act, sec. 419. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 31, 453; 31, 454.

§ 1153. **Special verdict, how rendered.** The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the court, read to the jury and agreed to by them, before they are discharged. En. February 14, 1872.

Crim. Prac. Act, sec. 420. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1154. **Form of special verdict.** The special verdict need not be in any particular form, but is sufficient if it present intelligibly the facts found by the jury. En. February 14, 1872.

Crim. Prac. Act, sec. 421. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1155. **Judgment on special verdict.** The court must give judgment upon the special verdict as follows:

1. If the plea is not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted under that indictment, judgment must be given accordingly. But if otherwise, judgment of acquittal must be given.

2. If the plea is a former conviction or acquittal of the same offense, the court must give judgment of acquittal or conviction, as the facts prove or fail to prove the former conviction or acquittal. En. February 14, 1872.

Cal. Rep. Cit. 93, 568.

Crim. Prac. Act, sec. 422. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 31, 454.

See ante, sec. 1016, subd. 3.

§ 1156. **When special verdict defective, new trial to be ordered.** If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of fact, from the evidence, as established to their satisfaction, the court must order a new trial. En. February 14, 1872.

Crim. Prac. Act, sec. 423. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 31, 454.

New trial: See post, sec. 1181.

§ 1157. **Jury to find degree of crime.** Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty. En. February 14, 1872.

Cal. Rep. Cit. 49, 179; 52, 454; 53, 627; 59, 384; 60, 110; 65, 538; 67, 351; 68, 180; 73, 581; 81, 618; 94, 386; 134, 308; 135, 62.

§ 1158. **Jury may find upon charge of previous conviction.** Whenever the fact of a previous conviction of another offense

is charged in an indictment or information, the jury, if they find a verdict of guilty of the offense with which he is charged, must also, unless the answer of the defendant admits the charge, find whether or not he has suffered such previous conviction. The verdict of the jury upon a charge of previous conviction may be: "We find the charge of previous conviction true," or, "We find the charge of previous conviction not true," as they find that the defendant has or has not suffered such conviction. En. February 14, 1872. Am'd. 1873-4, 446; 1880, 24.

Cal. Rep. Cit. 49, 395; 57, 560; 57, 572; 64, 155; 64, 340; 64, 403; 65, 297; 65, 398; 73, 445; 73, 446; 73, 447; 73, 450; 73, 451; 73, 452; 73, 549; 73, 550; 109, 297; 110, 42; 118, 389; 118, 390; 145, 610; 145, 611.

See ante, sec. 1155.

§ 1159. **Jury may convict of lesser offense, or of attempt.** The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense. En. February 14, 1872. Am'd. 1880, 24.

Cal. Rep. Cit. 53, 59; 56, 80; 59, 364; 65, 475; 76, 58; 91, 272; 93, 659; 99, 229; 100, 153; 100, 154; 100, 158; 105, 672; 115, 305; 135, 62; 135, 270; 136, 524; 137, 197; 138, 484; 143, 13; 143, 14; 143, 149; 143, 435; 144, 47.

Crim. Prac. Act, sec. 424. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 5, 134; 29, 628; 31, 454.

Lesser offense: See ante, sec. 1155.

§ 1160. **Verdict as to some defendants, new trial as to others.** On an indictment or information against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the

case as to the others may be tried by another jury. En. February 14, 1872. Am'd. 1880, 25.

Cal. Rep. Cit. 67, 413.

Crim. Prac. Act, sec. 425. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1161. Court may direct a reconsideration of the verdict.** When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered; but when there is a verdict of acquittal, the court cannot require the jury to reconsider it. If the jury render a verdict which is neither general nor special, the court may direct them to reconsider it, and it cannot be recorded until it is rendered in some form from which it can be clearly understood that the intent of the jury is either to render a general verdict or to find the facts specially and to leave the judgment to the court. En. February 14, 1872.

Cal. Rep. Cit. 48, 559; 68, 180; 68, 181; 118, 448.

Crim. Prac. Act, sec. 426. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 427. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 31, 454.

**§ 1162. When judgment may be given on informal verdict.** If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant upon the issue, or judgment is given against him on a special verdict. En. February 14, 1872.

Cal. Rep. Cit. 68, 180; 135, 62; 135, 63.



Crim. Prac. Act, sec. 428. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1163. **Polling the jury.** When a verdict is rendered, and before it is recorded, the jury may be polled at the request of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation. En. February 14, 1872.

Cal. Rep. Cit. 57, 101; 62, 520.

Crim. Prac. Act, sec. 429. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1164. **Recording the verdict.** When the verdict given is such as the court may receive, the clerk must immediately record it in full upon the minutes, read it to the jury, and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case. En. February 14, 1872.

Cal. Rep. Cit. 57, 98; 57, 101.

Crim. Prac. Act, sec. 430. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1165. **Defendant, when to be discharged.** If judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given, except where the acquittal is because of a variance between the pleading and proof, which may be obviated by a new indictment or information, the court may order his detention, to the end that a new indictment or information may be preferred, in the same manner and with like effect as provided in section one thousand one hundred and seventeen. En. February 14, 1872. Am'd. 1880, 25.

Cal. Rep. Cit. 61, 140; 64, 263; 70, 65; 79, 179; 79, 181; 91, 643; 118, 27.

Crim. Prac. Act, sec. 431. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 38, 476.

Jeopardy: See ante, sec. 687.

§ 1166. **Proceedings upon conviction or special verdict.** If a general verdict is rendered against the defendant, or a special verdict is given, he must be remanded, if in custody, or if on bail he may be committed to the proper officer of the county to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if money is deposited instead of bail, it must be refunded to the defendant. En. February 14, 1872.

Cal. Rep. Cit. 68, 182.

Crim. Prac. Act, sec. 432. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Bail: See post, secs. 1268 et seq.

§ 1167. **Proceedings on acquittal on ground of insanity.** If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county, to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the district attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the state insane asylum. If the jury find the defendant sane, he shall be discharged. En. Stats. 1873-4, 446.

Inquiry into insanity of defendant before trial or after conviction. See post, secs. 1367 et seq.

## CHAPTER V.

## BILLS OF EXCEPTION.

- § 1170. To what decisions exceptions may be taken.
- § 1171. When to be settled and signed.
- § 1172. Exceptions to decision of court by either party.
- § 1173. Exceptions to decision of the court by the defendant.
- § 1174. Exceptions, how settled.
- § 1175. What bill of exceptions is to contain.
- § 1176. Written charges need not be excepted to.
- § 1177. Bills of exception in criminal actions, amendment of; settled and time fixed for engrossment.

§ 1170. **To what decisions exceptions may be taken.** On the trial of an indictment or information, exceptions may be taken by the defendant to a decision of the court;

1. In disallowing a challenge to the panel of the jury, or to an individual juror for implied or actual bias;

2. In admitting or rejecting testimony on the trial of a challenge to a juror for actual bias;

3. In admitting or rejecting testimony, or in deciding any question of law not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the issue. En. February 14, 1872. Am'd. 1873-4, 447; 1880, 25; 1901, 81.

Cal. Rep. Cit. 49, 169; 51, 470; 51, 496; 53, 184; 53, 603; 56, 535; 59, 355; 61, 549; 61, 553; 70, 11; 83, 381; 87, 120; 96, 126; 96, 134; 96, 137; 96, 140; 115, 167; 123, 491; 124, 553; 132, 142; 134, 535; 135, 373; 135, 375; 142, 93.

Subd. 2—123, 488. Subd. 3—134, 544; 135, 374; 145,

738.

Crim. Prae. Act, sec. 433. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 218; 45, 142.

Challenges to jury: See ante, secs. 1055 et seq.

Trial of challenges: See ante, secs. 1078 et seq.

Rules of evidence: See ante, sec. 1102.

§ 1171. **When to be settled and signed.** When the defendant desires to have exceptions taken at the trial settled in a bill of exceptions, the draft of a bill must be prepared by him, and presented to the judge for settlement within ten

days after judgment has been entered against him, or, if the judge is absent from the county, or ill, so that such presentation cannot be made, the draft must, within that period, be delivered to the clerk for the judge. Notice in writing of the intended presentation of such draft to the judge, or of the delivery thereof to the clerk, must be served upon the district attorney at least to days before such presentation or delivery. When received by the clerk, he must note thereon the date of such receipt, and transmit or deliver the same to the judge at the earliest period practicable. The judge must, immediately upon the draft being presented or delivered to him, designate a time for the settlement of the bill, and, if the parties are not present, require the clerk to notify them in writing of such date. The time so fixed must not be changed for inconvenience to a party, except upon good cause, shown by affidavit of necessity therefor. When settled and engrossed, the bill must be signed by the judge and filed with the clerk. En. February 14, 1872. Am'd. 1873-4, 447; 1881, 6; 1905, 761.

1171, 1174. The design of the amendment to these sections is to bring about as far as possible an avoidance of the delay now so common in getting criminal cases to a hearing in the Supreme Court, and to require bills of exceptions in criminal cases to be settled as expeditiously as is compatible with the circumstances of the case. The phraseology of the present section is changed in certain respects to more clearly express its purpose. The clerk is required, upon receipt of the draft to note such receipt thereon; and the judge, upon receipt thereof, is required to immediately designate a time for settlement and have the parties notified thereof, if not present. The time so fixed cannot be changed for the convenience of a party, except upon good cause shown by affidavit.—Code Commissioner's Note.

Cal. Rep. Cit. 51, 470; 53, 184; 53, 423; 53, 425; 55, 73; 76, 514; 77, 356; 78, 406; 86, 157; 94, 506; 106, 645; 106, 646; 115, 167; 122, 210; 135, 373; 136, 20; 136, 669; 136, 670; 142, 93.

Crim. Prac. Act, sec. 434. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 218.

§ 1172. **Exceptions to decision of court b either party.** Exceptions may be taken by either party to the decision of a court or judge upon a matter of law:

1. In granting or refusing a motion to set aside an indictment or information.

2. In allowing or disallowing a demurrer to an indictment or information.

3. In granting or refusing a motion in arrest of judgment.
4. In granting or refusing a motion for a new trial.
5. In making, or refusing to make, an order after judgment affecting any substantial right of the parties. En. February 14, 1872. Am'd. 1885, 58.

Cal. Rep. Cit. 55, 74; 56, 535; 65, 175; 107, 478; 115, 161; 115, 167; 121, 495; 132, 142; 138, 32. Subd. 5—136, 21.

Arrest of judgment: See post, secs. 1185-1188.

New trial: See post, secs. 1179-1182.

**§ 1173. Exceptions to decision of the court by the defendant.** Exceptions may be taken by the defendant to a decision of the court upon a matter of law—

1. In refusing to grant a motion for a change of the place of trial.
2. In refusing to postpone the trial on motion of the defendant. En. February 14, 1872.

Cal. Rep. Cit. 55, 74; 56, 535; 65, 175; 115, 167; 132, 142; 138, 33.

**§ 1174. Exceptions, how settled.** When a party desires to have an exception mentioned in the last two sections settled in a bill of exceptions, the draft of a bill must, within ten days after the order or ruling complained of is made, be prepared and presented or delivered by him on notice as provided in section eleven hundred and seventy-one, and thereupon the same proceedings must be had for the settlement of such proposed bill in all respects as are provided in the last-mentioned section. The time specified in this section and section eleven hundred and seventy-one, within which the draft of a bill of exceptions must be presented to the judge or delivered to the clerk, may be extended for a reasonable period by the trial judge, or, in his absence from the county or inability to act, by a justice of the supreme court, but only for good cause and upon affidavit showing the necessity therefor, presented upon written notice of at least two days to the adverse party, who shall have the right to file counter affidavits. In no case can the time be extended by stipulation of the parties. If the judge in any case refuses to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the supreme court to prove the same, such application to be made in the

mode and manner and under such regulations as that court may prescribe; and the bill when proven must be certified by the chief justice as correct, and filed with the clerk of the court in which the action was tried, and when so filed it has the same force and effect as if settled by the judge who tried the cause. If the judge who presided at the trial ceases to hold office before the bill is tendered or settled, he may nevertheless settle such bill, or the party may, as provided in this section, apply to the supreme court to prove the same. En. February 14, 1872. Am'd. 1873-4, 448; 1905, 761.

See note to § 1171, ante.

Cal. Rep. Cit. 51, 321; 53, 184; 55, 74; 56, 119; 73, 2; 74, 190; 76, 284; 77, 356; 78, 346; 78, 347; 108, 32; 119, 57; 121, 281; 121, 495; 122, 211; 136, 21; 136, 669; 138, 33.

§ 1175. **What bill of exceptions is to contain.** A bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken; and the judge must, upon the settlement of the bill, whether agreed to by the parties or not, strike out all other matters contained therein. En. February 14, 1872.

Cal. Rep. Cit. 51, 321; 52, 212; 76, 285; 76, 351; 80, 157; 80, 488; 121, 281; 145, 68.

Crim. Prac. Act, sec. 436. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 218.

Crim. Prac. Act, sec. 437. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 218.

§ 1176. **Written charges need not be excepted to.** When written instructions have been presented, and given, modified, or refused, or when the charge of the court has been taken down by the reporter, the questions presented in such instructions or charge need not be excepted to or embodied in a bill of exceptions; but the judge must make and sign an indorsement upon such instructions, showing the action of the court thereon, and certify to the correctness of the reporter's transcript of the charge; and thereupon the same, with the indorsements, become a part of the record, and any

error in the action of the court thereon may be reviewed on appeal in like manner as if presented in a bill of exceptions. En. February 14, 1872. Am'd. 1905, 762.

The purpose of this amendment is to correct imperfections and confusion in the language of the present section, and to more clearly point out the duty of the judge in noting his action upon instructions requested by the parties.—Code Commissioner's Note.

Cal. Rep. Cit. 77, 180; 77, 181; 84, 581; 106, 36; 111, 259; 115, 161; 118, 329; 127, 547.

Crim. Prac. Act, sec. 438. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 218; 37, 276; 40, 287; 44, 598.

By section 1207, subdivision 3, post, all charges given or refused, and the indorsements thereon, constitute a part of the judgment roll or record of the action.

§ 1177. Bills of exceptions in criminal actions, amendment of; settled, and time fixed for engrossment. If the bill of exceptions proposed does not substantially conform to the requirements of section 1175 of this code, the judge before whom the cause was tried may cause the same to be amended so as to conform to said section, or the adverse party may, within ten days after the receipt of such proposed bill, serve and file amendments thereto; the amendments herein provided for shall be thereafter settled by the judge upon a day to be fixed by him, not more than ten days after the service and filing of such proposed amendments; after said bill of exceptions shall have been settled as herein provided for, the judge may fix a time within which the same shall be engrossed by the party presenting the same and when so engrossed and signed by the judge, the same shall constitute the engrossed and final bill of exceptions in the action or proceeding. En. Stats. 1905, 475.

## CHAPTER VI.

### NEW TRIALS.

§ 1179. New trial defined.

§ 1180. Its effect.

§ 1181. In what cases it may be granted.

§ 1182. Application for, when made.

§ 1179. New trial defined. A new trial is a re-examination of the issue in the same court, before another jury, after a verdict has been given. En. February 14, 1872.



Cal. Rep. Cit. 72, 15; 139, 216; 143, 210; 143, 589.

Crim. Prac. Act, sec. 439. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 4, 377; 4, 380; 46, 48.

§ 1180. **Its effect.** The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to, either in evidence or in argument, or be pleaded in bar of any conviction which might have been had under the indictment. En. February 14, 1872. Am'd. 1873-4, 449.

Cal. Rep. Cit. 99, 231; 99, 232; 138, 485; 138, 486.

§ 1181. **In what cases it may be granted.** When a verdict has been rendered against the defendant, the court may, upon his application, grant a new trial, in the following cases only:

1. When the trial has been had in his absence, if the indictment is for a felony.

2. When the jury has received any evidence out of court other than that resulting from a view of the premises.

3. When the jury has separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented.

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.

6. When the verdict is contrary to law or evidence.

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly-discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is re-



quired by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable. En. February 14, 1872.

Cal. Rep. Cit. 53, 184; 70, 472; 74, 487; 88, 490; 90, 199; 102, 332; 115, 304; 119, 2; 135, 371; 146, 130. Subd. 2—71, 398; 122, 183. Subd. 3—74, 483; 74, 485; 78, 334; 78, 335; 125, 507. Subd. 4—76, 575. Subd. 5—56, 118; 135, 373. Subd. 6—56, 118.

Crim. Prac. Act, sec. 440. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 161.

Cal. Rep. Cit. 18, 699; 21, 339; 33, 100; 43, 56.

§ 1182. **Application for, when made.** The application for a new trial must be made before judgment, and the order granting or denying the same must be immediately entered by the clerk in the minutes. En. February 14, 1872. Am'd. 1905, 697.

The change consists in the addition of the words "and the order granting or denying the same must be immediately entered by the clerk in the minutes" after "judgment," and is designed to conform the section to the present practice.—Code Commissioner's Note.

Cal. Rep. Cit. 80, 488; 98, 355; 135, 371; 142, 92; 142, 97.

Crim. Prac. Act, sec. 441. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## CHAPTER VII.

### ARREST OF JUDGMENT.

§ 1185. Motion in arrest of judgment.

§ 1186. Court may arrest judgment without motion.

§ 1187. Effect of arresting judgment.

§ 1188. Defendant, when to be held or discharged.

§ 1185. **Motion in arrest of judgment.** A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant, on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment or information mentioned in section ten hundred and four, unless the objection has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment. When determined, the order must be immediately

entered by the clerk in the minutes. En. February 14, 1872. Am'd. 1880, 25; 1905, 697.

The change consists in the addition of the words "when determined. the order must be immediately entered by the clerk in the minutes," after "judgment," and is designed to conform this section to the present practice.—Code Commissioner's Note.

Cal. Rep. Cit. 48, 252; 49, 390; 56, 535; 58, 225; 71, 389; 71, 392; 77, 33; 82, 621; 90, 199; 98, 128; 103, 428; 103, 677; 122, 143; 127, 549; 131, 250; 145, 503.

Crim. Prac. Act, sec. 442. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 27, 401; 27, 402; 29, 262; 37, 279.

Crim. Prac. Act, sec. 444. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Indictment, sufficiency of: See ante, sec. 960.

Grounds of demurrer to indictment or information: See ante, sec. 1004.

§ 1186. **Court may arrest judgment without motion.** The court may also, of its own motion, arrest the judgment for any of the defects mentioned in the last section, by an order for that purpose entered upon its minutes. En. February 14, 1872. Am'd. 1905, 698.

See note to section 1185.—Code Commissioner's Note.

Crim. Prac. Act, sec. 443. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 31, 626; 44, 34.

§ 1187. **Effect of arresting judgment.** The effect of an order arresting the judgment is to place the defendant in the same situation in which he was before the indictment was found or information filed. En. February 14, 1872. Am'd. 1880, 25; 1905, 698.

The purpose of this amendment is to give the same effect to an order of the court made on its own motion under section 1186 as section 1187 now gives to an order made on motion of the defendant.—Code Commissioner's Note.

Cal. Rep. Cit. 73, 406; 74, 98.

Crim. Prac. Act, sec. 445. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 44, 34.

§ 1188. **Defendant, when to be held or discharged.** If, from the evidence on the trial, there is reason to believe the defendant guilty, and a new indictment or information can be framed upon which he may be convicted, the court may order him to be recommitted to the officer of the proper county, or admitted to bail anew, to answer the new indictment or information. If the evidence shows him guilty of another offense, he must be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution. But if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged; or if admitted to bail, his bail is exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant; and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment or information was founded. En. February 14, 1872. Am'd. 1880, 25.

Cal. Rep. Cit. 64, 263; 74, 98; 109, 296; 132, 16.

Crim. Prac. Act, sec. 446. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 44, 34.

Discharge of defendant: See post, sec. 1485.

## TITLE VIII.

### OF JUDGMENT AND EXECUTION.

Chapter I. The Judgment, §§ 1191-1207.

II. The Execution, §§ 1213-1230.

#### CHAPTER I.

##### THE JUDGMENT.

- § 1191. Appointing time for judgment.
- § 1192. Upon plea of guilty, court must determine degree.
- § 1193. Presence of defendant.
- § 1194. Defendant in custody, how brought for judgment.
- § 1195. How brought before the court when on bail.
- § 1196. Bench-warrant to issue.
- § 1197. Form of bench-warrant.
- § 1198. Warrant, how served.
- § 1199. Arrest of defendant.
- § 1200. Arraignment of defendant for judgment.
- § 1201. What causes may be shown against the judgment.
- § 1202. If no cause shown, judgment to be pronounced.
- § 1203. Circumstances in aggravation or mitigation of punishment.
- § 1204. Proof of former conviction, etc., in mitigation, how made.
- § 1205. Duration of imprisonment on judgment to pay a fine.
- § 1206. Judgment to pay a fine constitutes a lien.
- § 1207. Entry of judgment.

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§ 1191. **Appointing time for judgment.** After a plea or verdict of guilty, or after a verdict against the defendant on the plea of a former conviction or acquittal, if the judgment is not arrested or a new trial granted, the court must appoint a time for pronouncing judgment, which, in cases of felony, must be at least two days after the verdict. En. February 14, 1872. Am'd. 1873-4, 449; 1905, 763.

The change consists in the omission of the words "if the court intend to remain in session so long; but if not, then at as remote a time as can reasonably be allowed," after "verdict," because the courts are always open.—Code Commissioner's Note.

Cal. Rep. Cit. 46, 96; 65, 174; 79, 632; 88, 174; 88, 177.

Crim. Prac. Act, sec. 447. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 45, 164.

Crim. Prac. Act, sec. 448. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1192. **Upon plea of guilty, court must determine degree.** Upon a plea of guilty of a crime distinguished or divided into degrees, the court must, before passing sentence, determine the degree. En. February 14, 1872.

Cal. Rep. Cit. 49, 178; 52, 453; 52, 454; 52, 455; 67, 114; 73, 582; 137, 646; 141, 551; 141, 552.

§ 1193. **Presence of defendant.** For the purpose of judgment, if the conviction is for felony, the defendant must be personally present; if for a misdemeanor, judgment may be pronounced in his absence. En. February 14, 1872.

Cal. Rep. Cit. 68, 180; 79, 632.

Crim. Prac. Act, sec. 449. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 37, 279; 42, 168.

Verdict in defendant's presence: See ante, sec. 1148.

§ 1194. **Defendant in custody, how brought for judgment.** When the defendant is in custody, the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so. En. February 14, 1872.

Crim. Prac. Act, sec. 450. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1195. **How brought before the court when on bail.** If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or of the money deposited, may direct the clerk to issue a bench-warrant for his arrest. En. February 14, 1872.

Cal. Rep. Cit. 68, 180.

Crim. Prac. Act, sec. 451. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1196. **Bench-warrant to issue.** The clerk, on the application of the district attorney, may, at any time after the order, whether the court be sitting or not, issue a

bench-warrant into one or more counties. En. February 14, 1872.

Crim. Prac. Act, sec. 452. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1197. **Form of bench-warrant.** The bench-warrant must be substantially in the following form: County of ——. The people of the state of California, to any sheriff, constable, marshal, or policeman in this state: A. B., having been on the — day of —, A. D. eighteen hundred and —, duly convicted in the superior court of the county of —, of the crime of — (designating it generally), you are therefore commanded forthwith to arrest the above named A. B., and bring him before that court for judgment. Given under my hand, with the seal of said court affixed, this — day of —, A. D. eighteen hundred and —. By order of the court. [Seal.] E. F., clerk. En. February 14, 1872. Am'd. 1880, 34.

Cal. Rep. Cit. 68, 180.

Crim. Prac. Act, sec. 453. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 161.

§ 1198. **Warrant, how served.** The bench-warrant may be served in any county in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by a magistrate of that county. En. February 14, 1872.

Crim. Prac. Act, sec. 455. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1199. **Arrest of defendant.** Whether the bench-warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof. En. February 14, 1872.

Crim. Prac. Act, sec. 455. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1200. **Arraignment of defendant for judgment.** When the defendant appears for judgment he must be informed by the court, or by the clerk, under its direction, of the nature of the charge against him and of his plea, and the

verdict, if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him. En. February 14, 1872. Am'd. 1880, 26.

Cal. Rep. Cit. 64, 372; 70, 470; 87, 123; 88, 120; 88, 142; 88, 175; 88, 178; 102, 231; 114, 355; 118, 390; 132, 140; 142, 97.

Crim. Prac. Act, sec. 456. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 31, 626.

§ 1201. What causes may be shown against judgment. He may show, for cause against the judgment:

1. That he is insane; and if, in the opinion of the court, there is reasonable ground for believing him insane, the question of insanity must be tried as provided in chapter six, title ten, part two of this code. If, upon the trial of that question, the jury finds that he is sane, judgment must be pronounced, but if they find him insane, he must be committed to the state hospital for the care and treatment of the insane, until he becomes sane; and when notice is given of that fact, as provided in section one thousand three hundred and seventy-two, he must be brought before the court for judgment;

2. That he has good cause to offer, either in arrest of judgment or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial. En. February 14, 1872. Am'd. 1905, 764.

The change consists in the substitution of the words "a state hospital for the care and treatment of the insane" for "lunatic asylum," after "to."—Code Commissioner's Note.

Cal. Rep. Cit. 62, 55; 68, 180; 70, 471; 114, 355; 142, 97; Subd. 1—122, 411. Subd. 2—142, 94.

Crim. Prac. Act, sec. 457. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Punishment of person while insane: See post, sec. 1367.

§ 1202. If no cause shown, judgment to be pronounced. If no sufficient cause is alleged or appears to the court why judgment should not be pronounced, it must thereupon be rendered. En. February 14, 1872.

Cal. Rep. Cit. 70, 471; 133, 123.

Crim. Prac. Act, sec. 458. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Judgment, rendition of.—After a plea or verdict of guilty, the court must appoint a time for pronouncing judgment, as provided in sec. 1191, ante.

§ 1203. **Circumstances in aggravation or mitigation of punishment.** After plea or verdict of guilty, where discretion is conferred upon the court as to the extent of the punishment, the court, upon oral suggestion of either party that there are circumstances which may properly be taken into view, either in aggravation or mitigation of the punishment, may in its discretion, hear the same summarily at a specified time and upon such notice to the adverse party as it may direct. In such cases and after the case of the defendant has been investigated by the probation officer and a written report filed of record in the court in accordance with this statute, and in accordance with section 131 of the Code of Civil Procedure, the court shall have power in its discretion to place the defendant upon probation in the manner following, if it shall appear to the judge, by such report so furnished by the probation officer or otherwise, as to any such defendant over the age of sixteen years so having pleaded guilty or having been convicted of crime, that there are circumstances in mitigation of the punishment or that the ends of justice and the interest of society and the reform of the defendant will be subserved thereby, viz.:

1. The court, judge or justice thereof may suspend the imposing of sentence and may direct that such suspension may continue for such period of time, not exceeding the maximum possible term of such sentence, and upon such terms and conditions as it shall determine, and shall place such person on probation, under the charge and supervision of the probation officer of said court during the suspension, or under the charge and supervision of the probation officer of the court of another county, where the court shall deem it best because of the residence or place of occupation or employment of the person so released on probation, or because the ends of justice or reform of such person will be best subserved thereby.

2. If the judgment is to pay a fine, and that the defendant be imprisoned until it be paid, the court, judge, or justice, upon imposing sentence, may direct that the execution of the sentence of imprisonment be suspended for such period



of time, not exceeding the maximum possible term of such sentence, and on such terms, as it shall determine, and shall place the defendant on probation, under the charge and supervision of the probation officer during such suspension, to the end that he may be given the opportunity to pay the fine; provided, however, that upon payment of the fine being made, judgment shall be satisfied and the probation cease.

3. At any time during the probationary term of the person released on probation, in accordance with the provisions of this section, any probation officer may, without warrant, or other process, at any time until the final disposition of the case, rearrest any person so placed in his care and bring him before the court. If in the opinion of the officer it is for the interest of justice and of society and the reform of such person that his probation be revoked and that he be committed to prison, such officer shall file his written recommendation thereof of record in the court; or the court may of its own motion in its discretion, issue a warrant for the rearrest of any such person and may thereupon or upon such written recommendation of such probation officer, revoke and terminate such probation, if the interest of justice and of society, or the reform of the person will be subserved thereby, and if the court, in its judgment, shall have reason to believe from the report of the probation officer, or otherwise, that the person so placed upon probation is violating the conditions of his probation, or engaging in any criminal or immoral practices, or has become abandoned to improper associates, or a vicious life. Upon such revocation and termination, the court may, if the sentence has been suspended, pronounce judgment at any time after the said suspension of the sentence within the longest period for which the defendant might have been sentenced, but if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke such suspension, whereupon the judgment shall have full force and effect, and the person shall be delivered over to the proper officer to serve his sentence, and the time during which the execution of such judgment was suspended shall not count as any part of any term of imprisonment provided for, by, or resulting under such judgment.

4. The court shall have power at any time during the term of probation to revoke or modify its order of suspension of imposition or execution of sentence. It may, at any time, when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on proba-

tion shall warrant it, terminate the period of probation and discharge the person so held, and in all cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall, at the end of the term of probation, be by the court discharged. En. February 14, 1872. Am'd. 1903, 34; 1905, 162.

Cal. Rep. Cit. 122, 631.

**§ 1204. Proof of former conviction, etc., in mitigation, how made.** The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county, out of court, upon such notice to the adverse party as the court may direct. No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by the court, or a judge thereof, in aggravation or mitigation of the punishment, except as provided in this and the preceding section. En. February 14, 1872.

**§ 1205. Duration of imprisonment on judgment to pay a fine.** A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied. But the judgment must specify the extent of the imprisonment, which must not exceed one day for every two dollars of the fine, nor extend in any case beyond the term for which the defendant might be sentenced to imprisonment for the offense of which he has been convicted. En. February 14, 1872. Am'd. 1873-4, 455; 1891, 52.

Cal. Rep. Cit. 54, 205; 54, 206; 60, 435; 63, 300; 63, 301; 64, 438; 66, 186; 73, 495; 73, 496; 82, 274; 82, 522; 83, 389; 83, 390; 83, 391; 84, 166; 84, 167; 85, 38; 88, 580; 88, 627; 94, 333; 94, 334; 97, 528; 113, 37.

Crim. Prac. Act, sec. 459. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1206. Judgment to pay fine constitutes a lien.** A judgment that a defendant pay a fine with or without the alternative of imprisonment constitutes a lien in like manner as a judgment for money rendered in a civil action. En. February 14, 1872. Am'd. 1905, 764.

The amendment makes the section applicable whether the fine was imposed with or without the alternative of imprisonment. (See *People v. Brown*, 113 Cal. 35.)—Code Commissioner's Note.

Cal. Rep. Cit. 113, 37; 129, 548.

Crim. Prac. Act, sec. 460. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1857, 164.

Cal. Rep. Cit. 7, 209; 28, 414.

See post, sec. 1570. Compare with post, sec. 1214.

§ 1207. **Entry of judgment.** When judgment upon a conviction is rendered, the clerk must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction, if any, and must, within five days, annex together and file the following papers, which constitute a record of the action:

1. The indictment or information, and a copy of the minutes of the plea or demurrer;

2. A copy of the minutes of the trial;

3. The written instructions given, modified, or refused, with the indorsements thereon, and the certified transcript of the charge of the court; and,

4. A copy of the judgment. En. February 14, 1872. Am'd. 1873-4, 449; 1880, 26; 1905, 764.

The design of the amendment is to conform the section to the amendment to section 1176. To effect this the words "and the certified transcript of the charge of the court" are inserted after "thereon."—Cole Commissioner's Note.

Cal. Rep. Cit. 52, 480; 57, 565; 58, 252; 59, 651; 65, 234; 65, 298; 71, 387; 73, 442; 77, 180; 78, 2; 88, 120; 88, 140; 88, 175; 88, 487; 103, 510; 114, 354; 118, 329; 120, 273; 121, 494; 127, 547; 133, 123; 145, 10.

Crim. Prac. Act, sec. 461. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 415.

§ 1208. [No such section.]

Crim. Prac. Act, sec. 462. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 252; 31, 499; 31, 626; 37, 275; 37, 276; 43, 457; 44, 599.

## CHAPTER II.

### THE EXECUTION.

- 1213. Execution of a judgment other than of death.
- 1214. If for fine alone, execution to issue as in civil cases.
- 1215. Judgment of fine and imprisonment, how executed.
- 1216. Judgment of imprisonment. Duty of sheriff.
- 1217. Execution upon judgment of death.
- 1218. Transmission of conviction and testimony to governor.
- 1219. Governor may require opinion of supreme court thereon.
- 1220. Judgment of death, when suspended.
- 1221. Insanity of defendant, how determined.
- 1222. Duty of district attorney upon inquisition.
- 1223. Order of court committing insane person to hospital.
- 1224. Defendant found to be sane, duty of warden.
- 1225. Proceedings when female is supposed to be pregnant.
- 1226. If female not pregnant, duty of warden.
- 1227. Judgment of death remaining in force, not executed. No appeal from order of court.
- 1228. Punishment of death, how inflicted.
- 1229. Execution, where to take place and who to be present.
- 1230. Return upon death-warrant.

§ 1213. **Execution of a judgment other than of death.** When a judgment, other than of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution. En. February 14, 1872.

Cal. Rep. Cit. 103, 413; 135, 342.

Crim. Prac. Act, sec. 643. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 253; 31, 499; 31, 622; 43, 457; 103, 413.

§ 1214. **If for fine alone, execution to issue as in civil cases.** If the judgment is for a fine with or without imprisonment, execution may be issued thereon as on a judgment in a civil action. En. February 14, 1872. Am'd. 1905, 698.

The amendment makes the rule of the section applicable, though the punishment include imprisonment as well as fine. (See *People v. Brown*, 113 Cal. 35.)—Cole Commissioner's Note.

Cal. Rep. Cit. 64, 156; 64, 438; 83, 390; 83, 391; 113, 37; 129, 548.

Crim. Prac. Act, sec. 464. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See ante, sec. 1206.

§ 1215. **Judgment of fine and imprisonment, how executed.** If the judgment is for imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer and by him detained until the judgment is complied with. Where, however, the court has suspended sentence, or where, after imposing sentence, the court has suspended the execution thereof and placed the defendant on probation, as provided in section twelve hundred and three of the Penal Code, the defendant, if over the age of sixteen years, must forthwith be placed under the care and supervision of the probation officer of the court committing him, until the expiration or the period of probation and the compliance with the terms and conditions of the sentence, or of the suspension thereof. Where, however, the probation has been terminated as provided in section twelve hundred and three of the Penal Code, and the suspension of the sentence, or of the execution revoked, and the judgment pronounced, the defendant must forthwith be committed to the custody of the proper officer and be detained until the judgment be complied with. En. February 14, 1872. Am'd. 1903, 35.

Cal. Rep. Cit. 63, 300; 64, 438; 83, 390; 94, 390.

Crim. Prae. Act. sec. 465. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 31, 627.

Payment of fine: See ante, sec. 1205.

§ 1216. **Judgment of imprisonment. Duty of sheriff.** If the judgment is for imprisonment in the state prison, the sheriff of the county must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden of the state prison. He must also deliver to the warden the certified copy of the judgment, and take from the warden a receipt for the defendant. En. February 14, 1872.

Cal. Rep. Cit. 135, 340; 135, 342; 136, 21.

Execution: Ante, sec. 1213.

§ 1217. **Execution upon judgment of death.** When judgment of death is rendered, a warrant, signed by the judge, and attested by the clerk, under the seal of the court, must be drawn and delivered to the sheriff. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than

sixty nor more than ninety days from the time of judgment, and must direct the sheriff to deliver the defendant, within ten days from the time of judgment, to the warden of one of the state prisons of this state, for execution, such prison to be designated in the warrant. En. February 14, 1872. Am'd. 1891, 272.

Cal. Rep. Cit. 54, 92; 68, 180; 68, 181; 93, 439; 95, 429; 119, 208; 141, 554.

Crim. Prac. Act, sec. 466. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1218. Transmission of conviction and testimony to governor.** The judge of the court of which a conviction requiring judgment of death is had, must, immediately after the conviction, transmit to the governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial. En. February 14, 1872.

Cal. Rep. Cit. 68, 180; 68, 182.

Crim. Prac. Act, sec. 467. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1219. Governor may require opinion of supreme court thereon.** The governor may thereupon require the opinion of the justices of the supreme court and of the attorney-general, or any of them, upon the statement so furnished. En. February 14, 1872.

Crim. Prac. Act, sec. 468. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1220. Judgment of death, when suspended.** No judge, court, or officer, other than the governor, can suspend the execution of a judgment of death, except the warden of the state prison to whom he is delivered for execution, as provided in the six succeeding sections, unless an appeal is taken. En. February 14, 1872. Am'd. 1891, 273.

Crim. Prac. Act, sec. 469. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1221. Insanity of defendant, how determined.** If, after his delivery to the warden for execution, there is good rea-

son to believe that a defendant, under judgment of death, has become insane, the warden must call such fact to the attention of the district attorney of the county in which the prison is situated, whose duty it is to immediately file in the superior court of such county a petition, stating the conviction and judgment, and the fact that the defendant is believed to be insane, and asking that the question of his sanity be inquired into. Thereupon the court must at once cause to be summoned and impaneled, from the regular jury list of the county, a jury of twelve persons to hear such inquiry. En. February 14, 1872. Am'd. 1891, 273; 1905, 698.

The amendment is designed to permit the warden to act without procuring the concurrence of the judge of the superior court, and requires the district attorney to act upon the suggestion of the warden by filing a petition and taking proceedings thereunder to ascertain whether the defendant is insane.—Code Commissioner's Note.

Crim. Prac. Act, sec. 470. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1222. Duty of district attorney upon inquisition.** The district attorney must attend the hearing, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court. En. February 14, 1872. Am'd. 1905, 699.

The change consists in the substitution of the word "hearing" for "inquisition."—Code Commissioner's Note.

Crim. Prac. Act, sec. 471. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1223. Order of court committing insane person to hospital.** The verdict of the jury must be entered upon the minutes, and thereupon the court must make and cause to be entered an order reciting the fact of such inquiry and the result thereof, and when it is found that the defendant is insane, the order must direct that he be taken to one of the state hospitals for the insane, and there kept in safe confinement until his reason is restored. En. February 14, 1872. Am'd. 1891, 273; 1905, 699.

The amendment requires the verdict to be entered upon the minutes, and the court to thereupon enter an order for the confinement of the defendant in a hospital if he is found to be insane.—Code Commissioner's Note.

Crim. Prac. Act, sec. 472. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.



§ 1224. **Defendant found to be sane, duty of warden.** If it is found that the defendant is sane, the warden must proceed to execute the judgment as specified in the warrant; if it is found that the defendant is insane, the warden must suspend the execution, and transmit a certified copy of the order mentioned in the last section to the governor, and deliver the defendant, together with a certified copy of such order, to the medical superintendent of the hospital named in such order. When the defendant recovers his reason, the superintendent of such hospital must certify that fact to the governor, who must thereupon issue to the warden his warrant, appointing a day for the execution of the judgment. En. February 14, 1872. Am'd. 1891, 273; 1905, 699.

The amendment provides for the action to be taken when the defendant recovers his reason, and consists in striking out all of the words following "execution," and in substituting new provisions in lieu thereof.—Code Commissioner's Note.

Cal. Rep. Cit. 141, 554.

Crim. Prac. Act, sec. 473. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 474. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1225. **Proceedings when female is supposed to be pregnant.** If there is good reason to believe that a female against whom a judgment of death is rendered is pregnant, such proceedings must be had as are provided in section twelve hundred and twenty-one, except that instead of a jury, as therein provided, the court may summon three disinterested physicians, of good standing in their profession, to inquire into the supposed pregnancy, who shall, in the presence of the court, but with closed doors, if requested by the defendant, examine the defendant and hear any evidence that may be produced, and make a written finding and certificate of their conclusion, to be approved by the court and spread upon the minutes. The provisions of section twelve hundred and twenty-two apply to the proceedings upon such inquiry. En. February 14, 1872. Am'd. 1891, 273; 1905, 699.

The amendment conforms the section to the proposed change in section 1221.—Code Commissioner's Note.

Crim. Prac. Act, sec. 475. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.



§ 1226. **If female is not pregnant, duty of warden.** If it is found that the female is not pregnant, the warden must execute the judgment; if it is found that she is pregnant the warden must suspend the execution of the judgment, and transmit a certified copy of the finding and certificate to the governor. When the governor receives from the warden a certificate that the defendant is no longer pregnant, he must issue to the warden his warrant appointing a day for the execution of the judgment. En. February 14, 1872. Am'd. 1891, 274; 1905, 699.

The change consists in the insertion of the words "certified copy of the finding and certificate," and in the addition of the provision relative to the Governor's issuing his warrant upon receiving a certificate from the warden.—Code Commissioner's Note.

Cal. Rep. Cit. 141, 554.

Crim. Prac. Act, sec. 476. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 477. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1227. **Judgment of death remaining in force, not executed; no appeal from order of court.** If for any reason a judgment of death has not been executed, and it remains in force, the court in which the conviction is had, on the application of the district attorney of the county in which the conviction is had, must order the defendant to be brought before it, or if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the warden of the state prison to whom the sheriff is directed to deliver the defendant execute the judgment at a specified time. The warden must execute the judgment accordingly. From an order directing and fixing the time for the execution of a judgment, as herein provided, there is no appeal. En. February 14, 1872. Am'd. 1891, 274; 1905, 700.

The change consists in the addition of the last sentence, which provides that no appeal can be taken from the order fixing the time for the execution of the judgment.—Code Commissioner's Note.

Cal. Rep. Cit. 54, 93; 61, 539; 61, 540; 68, 180; 93, 439; 119, 207; 119, 208; 120, 627; 120, 628; 123, 489; 141, 554.

Crim. Prac. Act, sec. 478. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 39, 104.

Crim. Prac. Act, sec. 479. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 39, 104.

§ 1228. **Punishment of death, how inflicted.** The punishment of death must be inflicted by hanging the defendant by the neck until he is dead. En. February 14, 1872.

Cal. Rep. Cit. 59, 357.

Crim. Prac. Act, sec. 480. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Warrant of execution: Sec. 1217.

§ 1229. **Execution, where to take place and who to be present.** A judgment of death must be executed within the walls of one of the state prisons designated by the court by which judgment is rendered. The warden of the state prison where the execution is to take place must be present at the execution and must invite the presence of a physician, the attorney-general of the state, and at least twelve reputable citizens, to be selected by him; and he shall, at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same. En. February 14, 1872. Am'd. 1891, 274.

Cal. Rep. Cit. 59, 355; 59, 357; 93, 439; 95, 429.

§ 1230. **Return upon death-warrant.** After the execution, the warden must make a return upon the death-warrant to the court by which the judgment was rendered, showing the time, mode, and manner in which it was executed. En. February 14, 1872. Am'd. 1891, 274.

## TITLE IX.

### OF APPEALS TO THE SUPREME COURT.

- Chapter I. Appeals, when Allowed and How Taken, and the Effect Thereof, §§ 1235-1246.
- II. Dismissing an Appeal for Irregularity, §§ 1248, 1249.
- III. Argument of the Appeal, §§ 1252-1255.
- IV. Judgment upon Appeal, §§ 1258-1265.

### CHAPTER I.

#### APPEALS, WHEN ALLOWED AND HOW TAKEN, AND THE EFFECT THEREOF.

- § 1235. Appeal, by whom taken, on questions of law alone.
- § 1236. Parties, how designated on appeal.
- § 1237. Appeal, when may be taken by the defendant.
- § 1238. In what cases by the people.
- § 1239. Appeals, within what time to be taken.
- § 1240. Appeal, how taken.
- § 1241. When notice may be served by publication.
- § 1242. Effect of an appeal by the people.
- § 1243. Effect of an appeal by the defendant.
- § 1244. Same.
- § 1245. Same.
- § 1246. Duty of clerks upon appeal.

§ 1235. Appeal, by whom taken, on questions of law alone. Either party in a prosecution by indictment or information may appeal to the supreme court on questions of law alone, as prescribed in this chapter. En. February 14, 1872. Am'd. 1905, 700.

The amendment is designed to make the section conform to Article VI, section 4. of the Constitution, which provides that the Supreme Court has jurisdiction "in all criminal cases prosecuted by indictment or information in a court of record, on questions of law alone," it having been held (in *People v. Jordan*, 65 Cal. 644) that it has jurisdiction in all such cases, and that if its jurisdiction by appeal is restricted to cases of felony, it would devolve upon it to establish some appropriate system of appellate procedure by which it could review all other convictions based upon an indictment or information.—Code Commissioner's Note.

Cal. Rep. Cit. 65, 645; 108, 663; 109, 279.

Crim. Prac. Act, sec. 481. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1858, 218; 1863, 162.

Cal. Rep. Cit. 9, 86; 31, 565; 34, 308; 39, 609; 42, 624; 44, 385.

Crim. Prac. Act, sec. 482. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1858, 218; 1866, 306 (in part).

Under the present constitution the appellate jurisdiction of the supreme court in criminal cases extends to "all criminal cases prosecuted by indictment or information in a court of record": Const. Cal. 1879, art. VI, sec. 4.

**§ 1236. Parties, how designated on appeal.** The party appealing is known as the appellant, and the adverse party as the respondent, but the title of the action is not changed in consequence of the appeal. En. February 14, 1872.

Crim. Prac. Act, sec. 483. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1237. Appeal, when may be taken by the defendant.** An appeal may be taken by the defendant:

1. From a final judgment of conviction.
2. From an order denying a motion for a new trial.
3. From any order made after judgment, affecting the substantial rights of the party. En. February 14, 1872.

Cal. Rep. Cit. 54, 92; 65, 100; 65, 101; 77, 309; 82, 615; 115, 161; 117, 666; 119, 2; 132, 15; 138, 33. Subd. 1—119, 57. Subd. 3—95, 595; 119, 209; 136, 20.

**§ 1238. In what cases by the people.** An appeal may be taken by the people:

1. From an order setting aside the indictment or information;
2. From a judgment for the defendant on a demurrer to the indictment, accusation or information;
3. From an order granting a new trial;
4. From an order arresting judgment;
5. From an order made after judgment, affecting the substantial rights of the people;

En. February 14, 1872. Am'd. 1880, 26; 1897, 195; 1905, 700.

The change consists in the omission of subdivision 6, because the court cannot make the order therein referred to, its action being limited to advising the jury to acquit; and if this advice is followed, an appeal is necessarily unavailing, because a defendant after his acquittal cannot be placed upon trial. (See *People v. Stoll*, 28 Cal. Dec., p. 22.)—Code Commissioner's Note.

**1239.** An appeal from a judgment must be taken within ninety days after its rendition and from an order within sixty days after it is made. (In effect 60 days from and after March 18, 1907.)



Cal. Rep. Cit. 65, 79; 65, 644; 70, 18; 71, 546; 107, 478; 113, 474; 114, 68; 114, 69. Subd. 5—114, 64.

§ 1239. **Appeals, within what time to be taken.** An appeal from a judgment must be taken within one year after its rendition, and from an order, within sixty days after it is made. En. February 14, 1872.

Cal. Rep. Cit. 53, 630; 95, 595; 105, 263; 132, 139; 136, 21.

Crim. Prac. Act, sec. 485. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1240. **Appeal, how taken.** An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, and serving a copy thereof upon the attorney of the adverse party. En. February 14, 1872. Am'd. 1905, 701.

The change consists in the omission of the words "or filed," after "entered."—Code Commissioner's Note.

Cal. Rep. Cit. 49, 455; 56, 120; 62, 482; 66, 11; 70, 34; 77, 309; 119, 669.

Crim. Prac. Act, sec. 486. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 487. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 488. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 34, 308.

§ 1241. **When notice may be served by publication.** If personal service of the notice cannot be made, the judge of the court in which the action was tried, upon proof thereof, by affidavit filed therein, may make an order for the publication of the notice in some newspaper, for a period not exceeding thirty days. Such publication is equivalent to personal service. En. February 14, 1872. Am'd. 1905, 701.

The change consists in the insertion of the words "by affidavit filed therein," after "thereof," the present section being entirely silent respecting the mode of proof.—Code Commissioner's Note.

Cal. Rep. Cit. 49, 455.

Crim. Prac. Act, sec. 489. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1242. Effect of an appeal by the people.** An appeal taken by the people in no case stays or affects the operation of a judgment in favor of the defendant, until judgment is reversed. En. February 14, 1872.

Crim. Prac. Act, sec. 490. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1243. Effect of an appeal by the defendant.** An appeal to the supreme court from a judgment of conviction stays the execution of the judgment in all capital cases and in all other cases, upon filing with the clerk of the court in which the conviction was had, a certificate of the judge of such court, or of a justice of the supreme court, that, in his opinion, there is probable cause for the appeal, but not otherwise. En. February 14, 1872. Am'd. 1873-4, 450.

Cal. Rep. Cit. 45, 305; 49, 682; 68, 180; 81, 164; 81, 166; 95, 596; 96, 596; 96, 597; 104, 401; 119, 129; 119, 209; 125, 252; 135, 60; 144, 657.

Crim. Prac. Act, sec. 491. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 32, 43.

**§ 1244. Same.** If the certificate provided for in the preceding section is filed, the sheriff must, if the defendant be in his custody, upon being served with a copy thereof, keep the defendant in his custody without executing the judgment, and detain him to abide the judgment on appeal. En. February 14, 1872.

**§ 1245. Same.** If before the granting of the certificate, the execution of the judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate the defendant must be restored, by the officer in whose custody he is, to his original custody. En. February 14, 1872. Am'd. 1905, 701.

The change consists in the insertion of the words "the execution of the" before "judgment."—Code Commissioner's Note.

**§ 1246. Duty of clerks upon appeal.** Upon the appeal being taken, the clerk of the court with whom the notice of appeal is filed must, within twenty days thereafter, in case the bill of exceptions has been settled by the judge before the giving of said notice, but if not, then within



twenty days from the settlement of the bill of exceptions, without charge, transmit to the clerk of the appellate court, fifteen printed copies (one of which shall be certified to and be the original) of the notice of appeal, the record, and of all bills of exceptions; and upon the receipt thereof, the clerk of the appellate court must file the original, and dispose of the copies as he is required to do in the case of transcripts on appeal in civil cases, and all his services as provided herein must be without charge. The clerk of the lower court must also within the time above specified serve printed copies of the above named papers without charge upon the defendant's attorney and upon the attorney-general. The printing of the above named papers is a county charge. En. February 14, 1872. Am'd. 1880, 9; 1889, 325.

Cal. Rep. Cit. 49, 649; 84, 582; 115, 167; 120, 554.

Crim. Prac. Act, sec. 492. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1862, 536.

## CHAPTER II.

### DISMISSING AN APPEAL FOR IRREGULARITY.

§ 1248. For what irregularity, and how dismissed.

§ 1249. Dismissal for want of a return.

§ 1248. **For what irregularity, and how dismissed.** If the appeal is irregular in any substantial particular, but not otherwise, the appellate court may, on any day, on motion of the respondent, upon five days' notice, accompanied with copies of the papers upon which the motion is founded, order it to be dismissed. En. February 14, 1872. Am'd. 1880, 10.

Cal. Rep. Cit. 69, 238; 95, 595; 132, 139.

Crim. Prac. Act, sec. 493. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1249. **Dismissal for want of a return.** The court may also, upon like motion, dismiss the appeal, if the return is not made as provided in section one thousand two hundred and forty-six, unless for good cause they enlarge the time for that purpose. En. February 14, 1872.

Crim. Prac. Act, sec. 494. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## CHAPTER III.

## ARGUMENT OF THE APPEAL.

§ 1252. Appeals, when to be heard and determined.

§ 1253. Judgment cannot be reversed without argument.

§ 1254. Number of counsel to be heard.

§ 1255. Defendant need not be present.

§ 1252. Appeals, when to be heard and determined. All appeals in criminal cases must be heard and determined by the appellate court within sixty days after the record is filed in said appellate court, unless continued on motion or with the consent of the defendant. En. February 14, 1872. Am'd. 1880, 10.

Cal. Rep. Cit. 91, 29; 97, 249.

Crim. Prac. Act, sec. 495. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1253. Judgment cannot be reversed without argument. The judgment may be affirmed if the appellant fail to appear, but can be reversed only after argument, though the respondent fail to appear. En. February 14, 1872.

Cal. Rep. Cit. 55, 298; 97, 248.

Crim. Prac. Act, sec. 496. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1254. Number of counsel to be heard. Upon the argument of the appeal, if the offense is punishable with death, two counsel must be heard on each side, if they require it. In any other case the court may, in its discretion, restrict the argument to one counsel on each side. En. February 14, 1872.

Cal. Rep. Cit. 55, 298.

Crim. Prac. Act, sec. 497. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1854, 81.

§ 1255. Defendant need not be present. The defendant need not personally appear in the appellate court. En. February 14, 1872.

Cal. Rep. Cit. 55, 298.

Crim. Prac. Act, sec. 498. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 162.

## CHAPTER IV.

## JUDGMENT UPON APPEAL.

- § 1258. Judgment without regard to technical errors.
- § 1259. What may be reviewed on an appeal by defendant.
- § 1260. May reverse, affirm, or modify the judgment, and order new trial.
- § 1261. New trial, where to be had.
- § 1262. Defendant discharged on reversal of judgment.
- § 1263. Judgment to be executed on affirmance.
- § 1264. Judgment upon appeal, how entered and remitted.
- § 1265. Jurisdiction ceases after judgment remitted.

**§ 1258. Judgment without regard to technical errors.**  
 After hearing the appeal, the court must give judgment without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties. En. February 14, 1872.

Cal. Rep. Cit. 47, 120; 50, 471; 53, 495; 55, 525; 56, 407; 57, 99; 57, 100; 58, 266; 59, 377; 59, 604; 62, 520; 63, 615; 65, 149; 65, 566; 71, 387; 73, 316; 88, 139; 88, 489; 90, 572; 94, 119; 94, 120; 102, 387; 104, 484; 105, 264; 106, 40; 109, 297; 115, 60; 117, 657; 120, 274; 133, 73; 133, 124; 137, 264; 137, 267; 138, 536; 139, 116; 139, 162; 141, 534; 144, 756; 145, 504; 147, 553.

Crim. Prac. Act, sec. 499. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 44, 95.

**§ 1259. What may be reviewed on an appeal by defendant.** Upon an appeal taken by the defendant from a judgment the court may review any intermediate order or ruling involving the merits, or which may have affected the judgment. En. February 14, 1872.

Cal. Rep. Cit. 65, 100; 65, 101; 119, 2; 135, 372; 135, 374; 145, 738.

Crim. Prac. Act, sec. 484. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 42, 624; 44, 95.

**§ 1260. May reverse, affirm, or modify the judgment, and order new trial.** The court may reverse, affirm, or modify the judgment or order appealed from, and may set aside, affirm, or modify any or all of the proceedings sub-

sequent to, or dependent upon, such judgment or order, and may, if proper, order a new trial. En. February 14, 1872.

Cal. Rep. Cit. 94, 386.

Crim. Prac. Act, sec. 500. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1261. **New trial, where to be had.** When a new trial is ordered, it must be directed to be had in the court of the county from which the appeal was taken. En. February 14, 1872.

Crim. Prac. Act, sec. 501. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1851, 407.

§ 1262. **Defendant discharged on reversal of judgment.** If a judgment against the defendant is reversed without ordering a new trial, the appellate court must, if he is in custody, direct him to be discharged therefrom; or if on bail, that his bail be exonerated; or if money was deposited instead of bail, that it be refunded to the defendant. En. February 14, 1872.

Cal. Rep. Cit. 61, 380; 143, 220.

Crim. Prac. Act, sec. 502. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1263. **Judgment to be executed on affirmance.** If a judgment against the defendant is affirmed, the original judgment must be enforced. En. February 14, 1872.

Crim. Prac. Act, sec. 503. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1264. **Judgment upon appeal, how entered and remitted.** When the judgment of the appellate court is given, it must be entered in the minutes, and a certified copy of the entry, with a copy of the opinion of the court attached thereto, forthwith remitted to the clerk of the court from which the appeal was taken. En. February 14, 1872. Am'd. 1905, 701.

The design of the amendment is to require a copy of the opinion of the Supreme Court to be certified to and sent to the clerk of the court below with the remittitur. The change consists in the insertion of the words "with a copy of the opinion of the court attached thereto," after "entry."—Code Commissioner's Note.

Crim. Prac. Act, sec. 504. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 39, 104; 41, 210.

§ 1265. **Jurisdiction ceases after judgment remitted.** After the certificate of the judgment has been remitted to the court below, the appellate court has no further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect must be made by the court to which the certificate is remitted. En. February 14, 1872.

Crim. Prac. Act, sec. 506. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 39, 104; 41, 211.

## TITLE X.

## MISCELLANEOUS PROCEEDINGS.

- Chapter I. Bail, §§ 1268-1317.
- II. Who may be Witnesses in Criminal Actions, §§ 1321-1323.
  - III. Compelling the Attendance of Witnesses, §§ 1326-1333.
  - IV. Examination of Witnesses Conditionally, §§ 1335-1346.
  - V. Examination of Witnesses on Commission, §§ 1349-1362.
  - VI. Inquiry into the Insanity of the Defendant Before Trial or After Conviction, §§ 1367-1373.
  - VII. Compromising Certain Public Offenses by Leave of the Court, §§ 1377-1379.
  - VIII. Dismissal of the Action, Before or After Indictment, for Want of Prosecution or Otherwise, §§ 1382-1389.
  - IX. Proceedings Against Corporations, §§ 1390-1397.
  - X. Entitling Affidavits, § 1401.
  - XI. Errors and Mistakes in Pleadings and Other Proceedings, § 1404.
  - XII. Disposal of Property Stolen or Embezzled, §§ 1407-1413.
  - XIII. Reprieves, Commutations, and Pardons, §§ 1417-1423.

## CHAPTER I.

## BAIL.

- Article 1. In What Cases the Defendant may be Admitted to Bail, §§ 1268-1274.
- II. Bail upon being Held to Answer before Indictment, §§ 1277-1281.
  - III. Bail upon an Indictment before Conviction, §§ 1284-1289.
  - IV. Bail on Appeal, §§ 1291-1292.
  - V. Deposit Instead of Bail, §§ 1295-1297.

- VI. Surrender of the Defendant, §§ 1300-1302.
- VII. Forfeiture of the Undertaking of Bail or of the Deposit of Money, §§ 1305-1307.
- VIII. Recommitment of the Defendant after Having Given Bail or Deposited Money Instead of Bail, §§ 1310-1317.

## ARTICLE I.

### IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

- § 1268. Admission to bail defined.
- § 1269. Taking of bail defined.
- § 1270. Offense not bailable.
- § 1271. Defendant when admitted to bail before conviction.
- § 1272. When admitted to bail after conviction and upon appeal.
- § 1273. Nature of bail.
- § 1274. When bail is matter of discretion, notice of application must be given to district attorney.

§ 1268. **Admission to bail defined.** Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail. En. February 14, 1872.

Cal. Rep. Cit. 54, 103.

Crim. Prac. Act, sec. 507. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Bail, where taken: See ante, sec. 822; post, sec. 1284.

§ 1269. **Taking of bail defined.** The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the people of this state a specified sum. En. February 14, 1872.

Crim. Prac. Act, sec. 508. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 19, 681.

**Excessive bail.**—Excessive bail shall not be required: Cal. Const., art. I, sec. 6; U. S. Const., Amendment 8.

§ 1270. **Offense not bailable.** A defendant charged with an offense punishable with death cannot be admitted to bail, when the proof of his guilt is evident or the presumption thereof great. The finding of an indictment does not

add to the strength of the proof or the presumptions to be drawn therefrom. En. February 14, 1872.

Cal. Rep. Cit. 68, 177; 85, 365; 92, 189.

Crim. Prac. Act, sec. 510. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1866, 418.

Cal. Rep. Cit. 19, 542.

Constitutional provision.—All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great Art. I, sec. 6.

§ 1271. **Defendant when admitted to bail before conviction.** If the charge is for any other offense, he may be admitted to bail before conviction, as a matter of right. En. February 14, 1872.

Cal. Rep. Cit. 54, 103; 68, 177; 68, 178; 68, 180; 68, 182; 68, 183; 92, 189.

Crim. Prac. Act, sec. 509. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 151.

Cal. Rep. Cit. 19, 542.

§ 1272. **When admitted to bail after conviction and upon appeal.** After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail:

1. As a matter of right, when the appeal is from a judgment imposing a fine only.

2. As a matter of discretion in all other cases. En. February 14, 1872.

Cal. Rep. Cit. 48, 552; 49, 681; 62, 491; 68, 177; 68, 178; 68, 180; 68, 182; 68, 183; 89, 80; 89, 81; 112, 629.

Crim. Prac. Act, sec. 512. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 41, 30.

§ 1273. **Nature of bail.** If the offense is bailable, the defendant may be admitted to bail before conviction:

First—For his appearance before the magistrate, on the examination of the charge, before being held to answer.

Second—To appear at the court to which the magistrate is required to return the depositions and statement, upon the defendant being held to answer after examination.



Third—After indictment, either before the bench-warrant is issued for his arrest, or upon any order of the court committing him, or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be transferred for trial.

And after conviction, and upon an appeal:

First—If the appeal is from a judgment imposing a fine only, on the undertaking of bail that he will pay the same, or such part of it as the appellate court may direct, if the judgment is affirmed or modified, or the appeal is dismissed.

Second—If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed, or that in case the judgment be reversed, and that the cause be remanded for a new trial, that he will appear in the court to which said cause may be remanded, and submit himself to the orders and process thereof. En. February 14, 1872. Am'd. 1875-6, 116.

Cal. Rep. Cit. 54, 103.

Crim. Prac. Act, sec. 513. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 514. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 20, 529.

§ 1274. When bail is matter of discretion, notice of application must be given to district attorney. When the admission to bail is a matter of discretion, the court or officer to whom the application is made must require reasonable notice thereof to be given to the district attorney of the county. En. February 14, 1872.

Crim. Prac. Act, sec. 511. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

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## ARTICLE II. •

## BAIL UPON BEING HELD TO ANSWER BEFORE INDICTMENT.

- § 1277. What magistrates may admit to bail.
- § 1278. Bail, how put in and form of the undertaking.
- § 1279. Qualifications of bail.
- § 1280. Bail, how to justify.
- § 1281. On allowance of bail, defendant to be discharged.

§ 1277. What magistrates may admit to bail. When the defendant has been held to answer upon an examination for a public offense, the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus. En. February 14, 1872.

Crim. Prac. Act, sec. 515. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1278. Bail, how put in, and form of the undertaking. Bail is put in by a written undertaking, executed by two sufficient sureties, (with or without the defendant, in the discretion of the magistrate) and acknowledged before the court or magistrate, in substantially the following form:

An order having been made on the — day of —, A. D. eighteen —, by A B, a justice of the peace of — county, [or as the case may be] that C D be held to answer upon a charge of [stating briefly the nature of the offense], upon which he has been admitted to bail in the sum of — dollars; we, E F and G H, [stating their place of residence and occupation] hereby undertake that the above-named C D will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment, and render himself in execution thereof, or, if he fails to perform either of these conditions, that we will pay to the people of the state of California the sum of — dollars [inserting the sum in which the defendant is admitted to bail.] En. February 14, 1872.

Cal. Rep. Cit. 54, 410.

Crim. Prac. Act, sec. 516. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 19, 681; 19, 682; 35, 109.

§ 1279. **Qualifications of bail.** The qualifications of bail are as follows:

1. Each of them must be a resident, householder, or freeholder within the state; but the court or magistrate may refuse to accept any person as bail who is not a resident of the county where bail is offered.

2. They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail. En. February 14, 1872.

Cal. Rep. Cit. 65, 583.

Crim. Prac. Act, sec. 517. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1855, 269.

§ 1280. **Bail, how to justify.** The bail must in all cases justify by affidavit taken before the magistrate, that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper. En. February 14, 1872.

Cal. Rep. Cit. 65, 583.

Crim. Prac. Act, sec. 518. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 519. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1281. **On allowance of bail, defendant to be discharged.** Upon the allowance of bail and the execution of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer, the defendant must be discharged. En. February 14, 1872.

Cal. Rep. Cit. 51, 470; 54, 411; 65, 583.

## ARTICLE III.

## BAIL UPON AN INDICTMENT BEFORE CONVICTION.

- § 1284. When offense is not capital.
- § 1285. When the offense is capital.
- § 1286. Bail on habeas corpus.
- § 1287. Form of undertaking.
- § 1288. Sections applicable to qualifications, etc.
- § 1289. Increase or reduction of bail.

§ 1284. **When offense is not capital.** When the offense charged is not punishable with death, the officer serving the bench-warrant must, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail. En. February 14, 1872. Am'd. 1880, 26.

Cal. Rep. Cit. 65, 582.

Crim. Prac. Act, sec. 520. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1285. **When the offense is capital.** If the offense charged is punishable with death, the officer arresting the defendant must deliver him into custody, according to the command of the bench-warrant. En. February 14, 1872. Am'd. 1880, 26.

Cal. Rep. Cit. 59, 417.

Crim. Prac. Act, sec. 521. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1286. **Bail on habeas corpus.** When the defendant is so delivered into custody, he must be held by the sheriff, unless admitted to bail on examination upon a writ of habeas corpus. En. February 14, 1872.

Cal. Rep. Cit. 59, 417.

Crim. Prac. Act, sec. 522. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Offense not bailable: See. ante, sec. 1270.

§ 1287. **Form of undertaking.** The bail must be put in by a written undertaking, executed by two sufficient sureties, (with or without the defendant, in the discretion of the court or magistrate) and acknowledged before the court or magistrate, in substantially the following form:

An indictment having been found on the ——— day of ———, A. D. eighteen ———, in the county court of the county of ———, charging A B with the crime of ———, [designating it generally] and he having been admitted to bail in the sum of ——— dollars, we, C D and E F, of ——— [stating their place of residence and occupation] hereby undertake that the above-named A B will appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and will at all times render himself amenable to the orders and process of the court, and, if convicted, will appear for judgment and render himself in execution thereof; or, if he fails to perform either of these conditions, that we will pay to the people of the state of California the sum of ——— dollars [inserting the sum in which the defendant is admitted to bail]. En. February 14, 1872.

Cal. Rep. Cit. 63, 409.

Crim. Prac. Act, sec. 523. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 162.

Action on forfeiture: Post, sec. 1306.

§ 1288. Sections applicable to qualifications, etc. The provisions contained in sections twelve hundred and seventy-nine, twelve hundred and eighty, and twelve hundred and eighty-one, in relation to bail before indictment, apply to bail after indictment. En. February 14, 1872. Am'd. 1873-4, 450.

Crim. Prac. Act, sec. 524. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1289. Increase or reduction of bail. After a defendant has been admitted to bail upon an indictment or information, the court in which the charge is pending, may, upon good cause shown, either increase or reduce the amount of bail. If the amount be increased, the court may order the defendant to be committed to actual custody, unless he give bail in such increased amount. If application be made by the defendant for a reduction of the amount, notice of the application must be served upon the district attorney. En. Stats. 1873-4, 450. Am'd. 1880, 27.

## ARTICLE IV.

## BAIL ON APPEAL.

§ 1291. Who may admit to bail.

§ 1292. Bail, qualifications of, and condition of undertaking.

§ 1291. **Who may admit to bail.** In the cases in which defendant may be admitted to bail upon an appeal, the order admitting him to bail may be made by any magistrate having the power to issue a writ of habeas corpus, or by the magistrate before whom the trial was had. En. February 14, 1872. Am'd. 1877-8, 122.

Crim. Prac. Act, sec. 525. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See ante, sec. 1273.

§ 1292. **Bail, qualifications of, and condition of undertaking.** The bail must possess the qualifications, and must be put in, in all respects, as provided in article two of this chapter, except that the undertaking must be conditioned as prescribed in section twelve hundred and seventy-three, for undertakings of bail on appeal. En. February 14, 1872.

Crim. Prac. Act, sec. 527. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## ARTICLE V.

## DEPOSIT INSTEAD OF BAIL.

§ 1295. Deposit, when and how made.

§ 1296. May, after bail is given and before forfeiture.

§ 1297. Deposit to be applied to payment of judgment and fine.

§ 1295. **Deposit, when and how made.** The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the clerk of the court in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is a certificate of the deposit, he must be discharged from custody. En. February 14, 1872.

Cal. Rep. Cit. 83, 391.

Crim. Prac. Act, sec. 528. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Return of deposit on surrender before forfeiture: Post, sec. 1302.

§ 1296. May, after bail is given and before forfeiture. If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made the bail is exonerated. En. February 14, 1872.

Crim. Prac. Act, sec. 529. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1297. Deposit to be applied to payment of judgment and fine. When money has been deposited, if it remains on deposit at the time of a judgment for the payment of a fine, the county clerk must, under the direction of the court, apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant. En. February 14, 1872.

Crim. Prac. Act, sec. 530. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## ARTICLE VI.

### SURRENDER OF THE DEFENDANT.

§ 1300. Surrender, by whom, when, and how made.

§ 1301. Defendant, how surrendered.

§ 1302. Return of deposit on surrender.

§ 1300. Surrender, by whom, when, and how made. At any time before the forfeiture of their undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledge the surrender;

2. Upon the undertaking and the certificate of the officer, the court in which the action or appeal is pending may, upon notice of five days to the district attorney of the county, with a copy of the undertaking and certificate, or

der that the bail be exonerated, and on filing the order and the papers used on the application, they are exonerated accordingly. En. February 14, 1872.

Cal. Rep. Cit. 102, 312.

Crim. Prac. Act, sec. 531. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 532. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1301. Defendant, how surrendered.** For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the state, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so. En. February 14, 1872.

Crim. Prac. Act, sec. 533. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1302. Return of deposit on surrender.** If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate. En. February 14, 1872.

Crim. Prac. Act, sec. 534. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Deposit instead of bail: Ante, secs. 1295 et seq.

## ARTICLE VII.

### FORFEITURE OF THE UNDERTAKING OF BAIL OR OF THE DEPOSIT OF MONEY.

§ 1305. How forfeited, and how forfeiture discharged.

§ 1306. Forfeiture to be enforced by action.

§ 1307. Deposit of money, when forfeited, how disposed of.

**§ 1305. How forfeited, and how forfeiture discharged.** If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any



other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, must thereupon be declared forfeited. But if at any time within twenty days after such entry in the minutes, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just. En. February 14, 1872. Am'd. 1905, 701.

The words "within twenty days after such entry in the minutes" are substituted for the words "before the final judgment of the court," after "time."—Code Commissioner's Note.

Cal. Rep. Cit. 102, 312.

Crim. Prac. Act, sec. 535. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 536. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1306. Forfeiture to be enforced by action.** If the forfeiture is not discharged, as provided in the last section, the district attorney may at any time after twenty days from the entry upon the minutes, as provided in the last section, proceed by action against the bail upon their undertaking. En. February 14, 1872. Am'd. 1905, 702.

The amendment is designed to conform the section to the amendment to section 1305, and the change consists in the substitution of the words "twenty days from the entry upon the minutes, as provided in the last section" for the words "the adjournment of the court," after the word "after."—Code Commissioner's Note.

Cal. Rep. Cit. 63, 410.

Crim. Prac. Act, sec. 537. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 7, 404; 19, 682.

District attorney authorized to bring action: Pol. Code, sec. 4256, subd. 3.

**§ 1307. Deposit of money, when forfeited, how disposed of.** If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted, the clerk with whom it is deposited must, at the end of thirty days, unless the court has before that time discharged the forfeiture,

pay over the money deposited to the county treasurer. En. February 14, 1872. Am'd. 1905, 702.

The change consists in the insertion of the words "at the end of thirty days, unless the court has before that time discharged the forfeiture," in place of the words "immediately after the adjournment of the court."—Code Commissioner's Note.

Crim. Prac. Act, sec. 538. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## ARTICLE VIII.

### RECOMMITMENT OF THE DEFENDANT, AFTER HAVING GIVEN BAIL OR DEPOSITED MONEY INSTEAD OF BAIL.

- § 1310. In what cases.
- § 1311. Contents of order.
- § 1312. Defendant may be arrested in any county.
- § 1313. If for failure to appear, defendant must be committed.
- § 1314. If for other cause, he may be admitted to bail.
- § 1315. Bail in such case, by whom taken.
- § 1316. Form of the undertaking.
- § 1317. Bail must possess what qualifications, and how put in.

**§ 1310. In what cases.** The court to which the committing magistrate returns the depositions, or in which an indictment, information, or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases:

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof.

2. When it satisfactorily appears to the court that his bail, or either of them, are dead or insufficient, or have removed from the state.

3. Upon an indictment being found or information filed in the cases provided in section nine hundred and eighty-five. En. February 14, 1872. Am'd. 1880, 27.

Crim. Prac. Act, sec. 539. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1311. Contents of order.** The order for the recommitment of the defendant must recite generally the facts upon which it is founded and direct that the defendant be arrested

by any sheriff, constable, marshal, or policeman, in this state, and committed to the officer in whose custody he was at the time he was admitted to bail, to be detained until legally discharged. En. February 14, 1872.

Crim. Prac. Act, sec. 540. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1312. **Defendant may be arrested in any county.** The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except that when arrested in another county the order need not be indorsed by a magistrate of that county. En. February 14, 1872.

Crim. Prac. Act, sec. 541. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1313. **If for failure to appear, defendant must be committed.** If the order recites, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order. En. February 14, 1872.

Crim. Prac. Act, sec. 542. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1314. **If for other cause, he may be admitted to bail.** If the order be made for any other cause, and the offense is bailable, the court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order. En. February 14, 1872.

Crim. Prac. Act, sec. 543. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1315. **Bail in such case, by whom taken.** When the defendant is admitted to bail, the bail may be taken by any magistrate in the county having authority in a similar case to admit to bail, upon the holding of the defendant to answer before an indictment, or by any other magistrate designated by the court. En. February 14, 1872.

Crim. Prac. Act, sec. 544. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1316. **Form of the undertaking.** When bail is taken upon the recommitment of the defendant, the undertaking must be in substantially the following form:

An order having been made on the — day of —, A. D. eighteen —, by the court, [naming it] that A B be admitted to bail in the sum of — dollars, in an action pending in that court against him in behalf of the people of the state of California, upon an [information, presentment, indictment, or appeal, as the case may be], we, C D and E F, of [stating their places of residence and occupation], hereby undertake that the above-named A B will appear in that or any other court in which his appearance may be lawfully required upon that [information, presentment, indictment, or appeal, as the case may be], and will at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof; or if he fails to perform either of these conditions, that we will pay to the people of the state of California the sum of — dollars [insert the sum in which the defendant is admitted to bail]. En. February 14, 1872.

Crim. Prac. Act, sec. 545. En. April 20, 1850. Rep. 1851, 290, En. 1851, 212.

§ 1317. **Bail must possess what qualifications, and how put in.** The bail must possess the qualifications, and must be put in, in all respects, in the manner prescribed in article II this chapter. En. February 14, 1872.

Qualifications of bail: See ante, sec. 1279.

Crim. Prac. Act, sec. 546. En. April 20, 1850. Rep. 1851, 290, En. 1851, 212.

## CHAPTER II.

### WHO MAY BE WITNESSES IN CRIMINAL ACTIONS.

§ 1321. Who are competent witnesses.

§ 1322. When husband and wife are competent witnesses.

§ 1323. When the defendant is not a competent witness.

§ 1321. **Who are competent witnesses.** The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code. En. February 14, 1872.

Cal. Rep. Cit. 47, 126; 70, 54; 104, 486; 106, 92.

Competency of witness: See Code Civ. Proc., secs. 1879 et seq.

**1322.** Neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding in which one or both are parties, except with the consent of both, or in cases of criminal violence upon one by the other, or in cases of criminal actions or proceedings brought under the provisions of sections 270 and 270a of this code, or in cases of criminal actions or proceedings for bigamy or adultery. (In effect 60 days from and after March 15, 1907.)



Examination of witnesses: Code Civ. Proc., sec. 2044.

Impeachment of witness: Code Civ. Proc., sec. 2051.

Attendance of witnesses: See post, secs. 1326 et seq.

Defendant as witness: See ante, sec. 688; post, sec. 1323.

Examination of witnesses conditionally: See post, sec. 1335.

Examination of witnesses on commission See post, secs. 1349-1362.

Interpreter, acts relating to appointment of: See post, Appendix, title Interpreters.

Interpreter, when sworn: Code Civ. Proc., sec. 1884.

Judge or juror as witness: Code Civ. Proc., sec. 1883.

Rules of examination of witnesses: Code Civ. Proc., secs. 2042-2054.

Witness defined: Code Civ. Proc., secs. 1878.

Witness, duties and rights of: Code Civ. Proc., secs. 2042-2054.

**§ 1322. When husband and wife are competent witnesses.** Neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties, except with the consent of both, or in cases of criminal violence upon one by the other, or in cases of criminal actions or proceedings brought under the provisions of section 270 of this code, or in cases of criminal actions or proceedings for bigamy. En. February 14, 1872. Am'd. 1873-4, 451; 1905, 140.

Cal. Rep. Cit. 64, 257; 64, 259; 70, 54; 73, 637; 137, 536.

Husband or wife as witness: See Code Civ. Proc., sec. 1881, subd. 1.

**§ 1323. When the defendant is not a competent witness.** A defendant in a criminal action or proceeding cannot be compelled to be a witness against himself; but if he offer himself as a witness, he may be cross-examined by the counsel for the people as to all matters about which he was examined in chief. His neglect or refusal to be a witness cannot in any manner prejudice him, nor be used against him on the trial or proceeding. En. February 14, 1872. Am'd. 1873-4, 451.

Cal. Rep. Cit. 47, 126; 53, 67; 57, 573; 66, 603; 66, 604; 70, 54; 73, 245; 75, 386; 75, 387; 75, 388; 75, 416; 78, 92; 78, 94; 81, 116; 83, 139; 83, 378; 98, 238; 99, 361; 99, 442; 100, 475; 100, 481; 100, 482; 104, 487; 118, 461; 122, 126; 122, 497; 134, 142; 134, 689; 143, 388; 145, 506.

### CHAPTER III.

#### COMPELLING THE ATTENDANCE OF WITNESSES.

- § 1326. Subpoena defined, and who may issue.
- § 1327. Form of subpoena.
- § 1328. Subpoena, by whom and how served.
- § 1329. Expenses of witness from without the county, or poor.
- § 1330. Attendance of witness residing or served out of the county.
- § 1331. Disobedience to subpoena, etc.
- § 1332. Failure to appear, undertaking forfeited.
- § 1333. Temporary removal of imprisoned witness.

§ 1326. Subpoena defined, and who may issue. The process by which the attendance of a witness before a court or magistrate is required is a subpoena; it may be signed and issued by:

1. A magistrate before whom a complaint is laid, for witnesses in the state, either on behalf of the people or of the defendant.

2. The district attorney, for witnesses in the state, in support of the prosecution, or for such other witnesses as the grand jury, upon an investigation pending before them, may direct.

3. The district attorney, for witnesses in the state, in support of an indictment or information, to appear before the court in which it is to be tried.

4. The clerk of the court in which an indictment or information is to be tried; and he must, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as clerk, for witnesses in the state, as the defendant may require. En. February 14, 1872 Am'd. 1880, 27.

Crim. Prac. Act, sec. 547. En. April 20, 1850. Rep. 1851, 290.

Crim. Prac. Act, sec. 548. En. April 20, 1850. Rep. 1851, 290.



Crim. Prac. Act, sec. 549. En. April 20, 1850. Rep. 1851, 290.

Crim. Prac. Act, sec. 550. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 551. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Subpoena defined: Code Civ. Proc., sec. 1985.

§ 1327. **Form of subpoena.** A subpoena authorized by the last section must be substantially in the following form: The people of the state of California to A B:

You are commanded to appear before C D, a justice of the peace of — township, in — county, [or as the case may be] at [naming the place], on [stating the day and hour], as a witness in a criminal action prosecuted by the people of the state of California against E F.

Given under my hand this — day of —, A. D. eighteen —, G H, justice of the peace, [or “J K, district attorney,” or “By order of the court, L M, clerk,” or as the case may be]. If books, papers, or documents are required, a direction to the following effect must be contained in the subpoena: “And you are required, also, to bring with you the following [describing intelligibly the books, papers, or documents required]. En. February 14, 1872.

Crim. Prac. Act, sec. 552. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 553. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1328. **Subpoena, by whom and how served.** A subpoena may be served by any person, but a peace officer must serve in his county any subpoena delivered to him for service, either on the part of the people or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the original to the witness personally, and informing him of its contents. En. February 14, 1872.

Crim. Prac. Act, sec. 554. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 555. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Subpoena, how served in civil cases: Code Civ. Proc., sec. 1987.

§ 1329. **Expenses of witness from without the county, or poor.** When a person attends before a magistrate, grand jury, or court, as a witness in a criminal case, upon a subpoena or in pursuance of an undertaking, and it appears that he has come from a place outside of the county, or that he is poor and unable to pay the expenses of such attendance, the court, at its discretion, if the attendance of the witness be upon a trial by an order upon its minutes, or in any other case, the judge, at his discretion, by a written order, may direct the county auditor to draw his warrant upon the county treasurer in favor of witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness. En. February 14, 1872. Am'd. 1875-6, 117.

Cal. Rep. Cit. 64, 244; 109, 334; 109, 335; 130, 676; 130, 677.

Crim. Prac. Act, sec. 556. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1872, 82.

Cal. Rep. Cit. 36, 555; 36, 557.

Crim. Prac. Act, sec. 557. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 36, 555; 36, 557.

§ 1330. **Attendance of witness residing or served out of the county.** No person is obliged to attend as a witness before a court or magistrate out of the county where the witness resides, or is served with the subpoena, unless the judge of the court in which the offense is triable, or a justice of the supreme court, or a judge of a superior court, upon an affidavit of the district attorney or prosecutor, or of the defendant, or his counsel, stating that he believes the evidence of the witness is material, and his attendance at the examination or trial necessary, shall indorse on the subpoena an order for the attendance of the witness. En. February 14, 1872. Am'd. 1880, 34.

Cal. Rep. Cit. 70, 205; 132, 305.

Crim. Prac. Act, sec. 558. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1331. **Disobedience to subpoena, etc.** Disobedience to a subpoena, or a refusal to be sworn or to testify as a

witness, may be punished by the court or magistrate as a contempt. A witness disobeying a subpoena issued on the part of the defendant, unless he show good cause for his non-attendance, is liable to the defendant in the sum of one hundred dollars, which may be recovered in a civil action. En. February 14, 1872.

Crim. Prac. Act, sec. 559. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 561. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Contempts: Code Civ. Proc., secs. 1209-1222.

§ 1332. **Failure to appear, undertaking forfeited.** When a witness has entered into an undertaking to appear, upon his failure to do so the undertaking is forfeited in the same manner as undertakings of bail. En. February 14, 1872.

Crim. Prac. Act, sec. 560. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1333. **Temporary removal of imprisoned witness.** When the testimony of a material witness for the people is required in a criminal action, before a court of record of this state, and such witness is a prisoner in the state prison, or in a county jail, an order for his temporary removal from such prison or jail, and for his production before such court, may be made by the court in which the action is pending, or by the judge thereof; but in case the **prison or jail is out of the county** in which the application is made, such order shall only be made upon the affidavit of the district attorney, or other person, on behalf of the people, showing that the testimony is material and necessary; and even then the granting of the order shall be in the discretion of the court or judge. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, to safely keep him, and when he is no longer required as a witness, to return him to the prison or jail whence he was taken; the expense of executing such order shall be paid by the county in which the order shall be made. En. Stats. 1877-8, 123.

Cal. Rep. Cit. 82, 457; 82, 461; 82, 463; 82, 468.

## CHAPTER IV.

## EXAMINATION OF WITNESSES CONDITIONALLY.

- § 1335. Examination of witnesses conditionally.
- § 1336. In what cases order may be applied for.
- § 1337. Application, how made.
- § 1338. Application, to whom made.
- § 1339. Order, what to contain.
- § 1340. Defendant has right to be present at examination.
- § 1341. Examination not to proceed, when.
- § 1342. Attendance of witness, how enforced.
- § 1343. Testimony, how taken and authenticated.
- § 1344. Deposition to be transmitted to clerk.
- § 1345. When may be read in evidence. Objections, etc.
- § 1346. Deposition of witness imprisoned in another county.

§ 1335. **Examination of witnesses conditionally.** When a defendant has been held to answer a charge for a public offense, he, in all cases, and the people in cases other than of homicide, may, either before or after an indictment or information, have witnesses examined conditionally in his or their behalf, as prescribed in this chapter. En. February 14, 1872. Am'd. 1880, 27; 1905, 702.

1335, 1336, 1337, 1338, 1339, 1340, 1341. By the amendment to the above sections, the provisions of the statute respecting the conditional examination of witnesses have been extended so far as may be constitutionally done, to the end that the prosecution, except in cases of homicide, may have the same privilege as the accused of taking conditionally the testimony of witnesses who are about to leave the state, or who are so sick and infirm as to afford reasonable grounds for apprehending that they will be unable to attend the trial. The proposed change is within the contemplation of that part of section 13 of Article I of the Constitution, which provides that "the legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend the trial."—Code Commissioner's Note.

Crim. Prac. Act, sec. 562. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 38, 186; 38, 187.

§ 1336. **In what cases an order may be applied for.** When a material witness for the defendant, or for the people, is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehension that he will be unable to attend the trial, the defendant or the people may apply for an order that the witness be examined conditionally. En. February 14, 1872. Am'd. 1905, 702.

See note to § 1335, ante.

Cal. Rep. Cit. 66, 396; 82, 463.

Crim. Prac. Act, sec. 563. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 186.

§ 1337. **Application, how made.** The application must be made upon affidavit stating:

1. The nature of the offense charged;

2. The state of the proceedings in the action;

3. The name and residence of the witness, and that his testimony is material to the defense or the prosecution of the action;

4. That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial. En. February 14, 1872. Am'd. 1905, 703.

See note to § 1335, ante.

Cal. Rep. Cit. 82, 463.

Crim. Prac. Act, sec. 566. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 38, 186.

§ 1338. **Application, to whom made.** The application may be made to the court, or a judge thereof, and must be upon three days' notice to the opposite party. En. February 14, 1872. Am'd. 1880, 5; 1905, 703.

See note to § 1335, ante.

Crim. Prac. Act, sec. 567. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1339. **Order, what to contain.** If the court or judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally, at a specified time and place, and before a magistrate designated therein. En. February 14, 1872. Am'd. 1905, 703.

See note to § 1335, ante.

Crim. Prac. Act, sec. 568. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 569. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1340. **Defendant has right to be present at examination.** The defendant has the right to be present in person and with counsel at such examination, and if the defendant is in custody, the officer in whose custody he is, must be informed of the time and place of such examination, and must take the defendant thereto, and keep him in the presence and hearing of the witness during the examination. En. February 14, 1872. Am'd. 1905, 703.

See note to § 1335, ante.

§ 1341. **Examination not to proceed, when.** If, at the time and place so designated, it is shown to the satisfaction of the magistrate that the witness is not about to leave the state, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place. En. February 14, 1872. Am'd. 1905, 703.

See note to § 1335, ante.

§ 1342. **Attendance of witness, how enforced.** The attendance of the witness may be enforced by a subpoena, issued by the magistrate before whom the examination is to be taken. En. February 14, 1872.

§ 1343. **Testimony, how taken and authenticated.** The testimony given by the witness must be reduced to writing, and authenticated in the same manner as the testimony of a witness taken in support of an information. En. February 14, 1872.

§ 1344. **Deposition to be transmitted to clerk.** The deposition taken must, by the magistrate, be sealed up and transmitted to the clerk of the court in which the action is pending, or may come for trial. En. February 14, 1872.

§ 1345. **When may be read in evidence. Objections, etc.** The deposition or a certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the state. Upon reading the deposition in evidence, the same objections may be taken to a question or answer contained therein as if the witness has been examined orally in court. En. February 14, 1872.

Cal. Rep. Cit. 75, 303; 108, 445.

Crim. Prac. Act, sec. 582. En. April 20, 1850.

Rep. 1851, 290. En. 1851, 212.

§ 1346. **Deposition of witness imprisoned in another county.** When a material witness for a defendant, under a criminal charge, is a prisoner in the state prison, or in the county jail of a county other than that in which the defendant is to be tried, his deposition may be taken, on behalf of the defendant, in the manner provided for in the case of a witness who is sick, and the provisions of the Penal Code, commencing with section thirteen hundred and thirty-five, and ending with section thirteen hundred and forty-five, shall, so far as applicable, govern in the application for and in the taking and use of such deposition. Such deposition may be taken before any magistrate or notary public of the county in which the jail or prison is situated; or in case the witness is confined in the state prison, and the defendant is unable to pay for taking the deposition, before the warden or clerk of the board of directors of the state prison, whose duty it shall be to act without compensation. Every officer, before whom testimony shall be taken by virtue hereof, shall have authority to administer, and shall administer, an oath to the witness that his testimony shall be the truth, the whole truth, and nothing but the truth. En. Stats. 1877-8, 123. Am'd. 1880, 28.

Cal. Rep. Cit. 82, 457; 82, 463.

## CHAPTER V.

### EXAMINATION OF WITNESSES ON COMMISSION.

- § 1349. \* Examination of witness residing out of the state.
- 1350. When defendant may apply for an order to examine.
- 1351. Commission defined.
- 1352. Application made on affidavit.
- 1353. Application, to whom made.
- 1354. Order for commission, when granted, stay of proceedings.
- 1355. Interrogations, how settled and allowed.
- 1356. Direction as to the return of the commission.
- 1357. Commission, how executed.
- 1358. Returned commission, delivered to an agent.
- 1359. Same.
- 1360. When and how filed.
- 1361. Commission and return, open for inspection. Copies, etc.
- 1362. Depositions to be read in evidence. Objections.

§ 1349. **Examination of witness residing out of the state.** When an issue of fact is joined upon an indictment or information, the defendant may have any material witness,



residing out of the state, examined in his behalf, as prescribed in this chapter, and not otherwise. En. February 14, 1872. Am'd. 1880, 28.

Cal. Rep. Cit. 84, 26.

§ 1350. **When defendant may apply for an order to examine.** When a material witness for the defendant resides out of the state, the defendant may apply for an order that the witness be examined on a commission. En. February 14, 1872.

§ 1351. **Commission defined.** A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath or on interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions given with the commission. En. February 14, 1872.

Crim. Prac. Act, sec. 564. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1352. **Application made on affidavit.** The application must be made upon affidavit, stating:

1. The nature of the offense charged;
2. The state of the proceedings in the action, and that an issue of fact has been joined therein;
3. The name of the witness, and that his testimony is material to the defense of the action;
4. That the witness resides out of the state. En. February 14, 1872.

§ 1353. **Application, to whom made.** The application may be made to the court, or a judge thereof, and must be upon three days' notice to the district attorney. En. February 14, 1872. Am'd. 1880, 6.

Crim. Prac. Act, sec. 573. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1354. **Order for commission, when granted, stay of proceedings.** If the court to whom the application is made is satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commis-



sion be issued to take his testimony; and the court may insert in the order a direction that the trial be stayed for a specified time, reasonably sufficient for the execution and return of the commission. En. February 14, 1872. Am'd. 1880, 28.

Cal. Rep. Cit. 84, 26; 108, 11.

§ 1355. **Interrogations, how settled and allowed.** When the commission is ordered, the defendant must serve upon the district attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the court or judge. The district attorney may in like manner serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission, with the like notice. In the interrogatories either party may insert any questions pertinent to the issue. When the interrogatories and cross-interrogatories are presented to the court or judge, according to the notice given, the court or judge must modify the questions so as to conform them to the rules of evidence, and must indorse upon them his allowance and annex them to the commission. En. February 14, 1872.

Crim. Prac. Act, sec. 570. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 571. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 572. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1356. **Direction as to the return of the commission.** Unless the parties otherwise consent, by an indorsement upon the commission, the court or judge must indorse thereon a direction as to the manner in which it must be returned, and may, in his discretion, direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the action is pending, designating his name and the place where his office is kept. En. February 14, 1872.

Crim. Prac. Act, sec. 574. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1357. **Commission, how executed.** The commissioner, unless otherwise specially directed, may execute the commission as follows:

First. He must publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth.

Second. He must cause the examination of the witness to be reduced to writing, and subscribed by him.

Third. He must write the answers of the witness as near as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it until it conforms to what he declares is the truth.

Fourth. If the witness decline answering a question, that fact, with the reason assigned by him for declining, must be stated.

Fifth. If any papers or documents are produced before him and proved by the witness, they, or copies of them, must be annexed to the deposition subscribed by the witness and certified by the commissioner.

Sixth. The commissioner must subscribe his name to each sheet of the deposition, and annex the deposition with the papers and documents proved by the witness, or copies thereof, to the commission, and must close it up under seal, and address it as directed by the indorsement thereon.

Seventh. If there be a direction on the commission to return it by mail, the commissioner must immediately deposit it in the nearest postoffice. If any other direction be made by the written consent of the parties, or by the court or judge, on the commission, as to its return, the commissioner must comply with the direction.

A copy of this section must be annexed to the commission. En. February 14, 1872. Am'd. 1873-4, 451.

Crim. Prac. Act, sec. 575. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 576. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1358. **Returned commission, delivered to an agent.** If the commission and return be delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the judge of the court in which the action is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it. En. February 14, 1872. Am'd. 1880, 28.

Crim. Prac. Act, sec. 577. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1359. **Same.** If the agent is dead, or from sickness or other casualty unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hands of the commissioner. En. February 14, 1872.

Crim. Prac. Act, sec. 578. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1360. **When and how filed.** The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending. If the commission and return is transmitted by mail, the clerk to whom it is addressed must receive it from the postoffice, and open and file it in his office, where it must remain, unless otherwise directed by the court or judge. En. February 14, 1872.

Crim. Prac. Act, sec. 579. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 580. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1361. **Commission and return, open for inspection. Copies, etc.** The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same or of any part thereof, on payment of his fees. En. February 14, 1872.

Crim. Prac. Act, sec. 581. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1362. **Depositions to be read in evidence. Objections.** The depositions taken under the commission may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause

whatever; and the same objections may be taken to a question in the interrogatories or to an answer in the deposition, as if the witness had been examined orally in court. En. February 14, 1872.

## CHAPTER VI.

### INQUIRY INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

- § 1367. Insane person cannot be tried, or punished.
- § 1368. Doubt as to sanity of defendant; examination of, before jury; stay of proceedings.
- § 1369. Trial of the question of insanity. Charge of the court.
- § 1370. Verdict of the jury as to sanity, and proceedings thereon.
- § 1371. If defendant is committed, it exonerates his bail, etc.
- § 1372. Defendant detained in asylum until he becomes sane.
- § 1373. Expenses of sending, etc., defendant to hospital, a charge against county.

§ 1367. Insane person cannot be tried, or punished. A person cannot be tried, adjudged to punishment, or punished for a public offense, while he is insane. En. February 14, 1872.

Cal. Rep. Cit. 105, 340; 106, 56; 126, 427; 126, 616; 129, 331; 129, 332; 142, 338.

Crim. Prac. Act, sec. 583. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 31, 579.

Acquittal on the ground of insanity: Ante, sec. 1167.

§ 1368. Doubt as to sanity of defendant; examination of, before jury; stay of proceedings. If at any time during the pendency of an action up to and including the time when defendant is brought up for judgment on conviction a doubt arises as to the sanity of the defendant, the court must order the question as to his sanity to be submitted to a jury; and the trial or the pronouncing of the judgment must be suspended until the question is determined by their verdict, and the trial jury may be discharged or retained, according to the discretion of the court, during the pendency of the issue of insanity. En. February 14, 1872. Am'd. 1873-4, 452; 1880, 28; 1905, 222.

Cal. Rep. Cit. 67, 380; 85, 301; 85, 302; 85, 303; 105, 340; 106, 51; 116, 441; 126, 426; 126, 427; 126, 616; 132, 305; 138, 379.

Crim. Prac. Act, sec. 584. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 31, 580.

Crim. Prac. Act, sec. 585. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Insanity as a defense generally: Ante, sec. 26.

Order of trial: Ante, sec. 1369.

Acquittal on the ground of insanity: See ante, sec. 1167.

**§ 1369. Trial of the question of insanity. Charge of the court.** The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case, and offer evidence in support of the allegation of insanity;

2. The counsel for the people may then open their case, and offer evidence in support thereof;

3. The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original cause;

4. When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the counsel for the people must commence, and the defendant or his counsel may conclude the argument to the jury;

5. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases, the argument may be restricted to one counsel on each side;

6. The court must then charge the jury, stating to them all matters of law necessary for their information in giving their verdict. En. February 14, 1872.

Cal. Rep. Cit. 105, 340; 126, 426; 126, 616.

Crim. Prac. Act, sec. 586. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 587. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1370. Verdict of the jury as to sanity, and proceedings thereon.** If the jury finds the defendant sane, the trial

must proceed, or judgment be pronounced, as the case may be. If the jury finds the defendant insane, the trial or judgment must be suspended until he becomes sane, and the court must order that he be in the meantime committed by the sheriff to a state hospital for the care and treatment of the insane, and that upon his becoming sane he be redelivered to the sheriff. En. February 14, 1872. Am'd. 1873-4, 453; 1880, 29; 1905, 704.

The change consists in the substitution of the words "a state hospital for the care and treatment of the insane," in the place of "insane asylum."—Code Commissioner's Note.

Cal. Rep. Cit. 126, 617; 129, 331; 138, 380.

Crim. Prac. Act, sec. 588. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 589. En. April 20, 1850. Rep. 1851, 290. En. 151, 212.

Cal. Rep. Cit. 31, 580.

Insane defendant, redelivery to sheriff on discharge from asylum: See Pol. Code, sec. 2189.

§ 1371. If defendant is committed, it exonerates his bail, etc. The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person, authorized to receive the property of the defendant, to a return of any money he may have deposited instead of bail. En. February 14, 1872.

Crim. Prac. Act, sec. 590. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1372. Defendant detained in hospital until he becomes sane. If the defendant is received into the state hospital he must be detained there until he becomes sane. When he becomes sane, the superintendent must certify that fact to the sheriff and district attorney of the county. The sheriff must thereupon, without delay, bring the defendant from the state hospital, and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged. En. February 14, 1872. Am'd. 1905, 704.

The change consists in the substitution of the words "state hospital" for "asylum."—Code Commissioner's Note.

Cal. Rep. Cit. 126, 616; 126, 617; 129, 331; 129, 332.

Crim. Prac. Act, sec. 591. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 31, 581.

§ 1373. **Expenses of sending, etc., defendant to hospital, a charge against county.** The expenses of sending the defendant to the state hospital, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or information filed; but the county may recover them from the estate of the defendant, if he has any, or from a relative, town, city, or county bound to provide for and maintain him. En. February 14, 1872. Am'd. 1880, 29; 1905, 704.

The change consists in the substitution of the words "state hospital" for "asylum."—Code Commissioner's Note.

Cal. Rep. Cit. 126, 616; 129, 331; 138, 380; 138, 381; 138, 382; 138, 383.

Crim. Prac. Act, sec. 592. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## CHAPTER VII.

### COMPROMISING CERTAIN PUBLIC OFFENSES BY LEAVE OF THE COURT.

§ 1377. Compromise of offenses for which civil action may be had.

§ 1378. Compromise by permission of the court bars another prosecution.

§ 1379. No public offense to be compromised except.

§ 1377. **Compromise of offenses for which civil action may be had.** When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it is committed:

1. By or upon an officer of justice, while in the execution of the duties of his office.

2. Riotously.

3. With an intent to commit a felony. En. February 14, 1872.

Crim. Prac. Act, sec. 675. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1378. **Compromise by permission of the court bars another prosecution.** If the party injured appears before the court to which the depositions are required to be returned, at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its dis-



cretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense. En. February 14, 1872.

Crim. Prac. Act, sec. 676. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 677. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Restoration of property embezzled, ground for mitigation of punishment: Ante, sec. 513.

§ 1379. **No public offense to be compromised except.** No public offense can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise be stayed, except as provided in this chapter. En. February 14, 1872.

Crim. Prac. Act, sec. 678. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## CHAPTER VIII.

### DISMISSAL OF THE ACTION BEFORE OR AFTER INDICTMENT FOR WANT OF PROSECUTION OR OTHERWISE.

§ 1382. When action may be dismissed.

§ 1383. Continuance and discharge from custody.

§ 1384. If action dismissed, defendant to be discharged, etc.

§ 1385. Dismissed on motion of court or application of district attorney.

§ 1386. Nolle prosequi abolished.

§ 1387. Dismissal of actions, order for bar in misdemeanor, but not in felony.

§ 1388. Judgment suspended in case of minor, when.

§ 1389. Prohibiting minors to visit houses of ill-fame.

§ 1382. **When action may be dismissed.** The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed in the following cases:

1. When a person has been held to answer for a public offense, if an indictment is not found or an information filed against him, within thirty days thereafter.

2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial within sixty days after the finding of the indictment, or filing of the information. En. February 14, 1872. Am'd. 1880, 29.



Cal. Rep. Cit. 54, 101; 54, 413; 54, 414; 63, 346; 65, 218; 69, 540; 74, 576; 82, 109; 85, 516; 91, 29; 99, 101; 100, 3; 100, 6; 113, 284; 113, 285; 116, 154; 127, 374; 133, 357; 140, 658; 144, 56. Subd. 2—77, 447; 116, 152; 127, 373; 130, 162; 133, 351; 136, 294.

Crim. Prac. Act, sec. 593. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 594. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 19, 549.

Dismissal before indictment: See ante, sec. 941.

§ 1383. **Continuance and discharge from custody.** If the defendant is not charged or tried, as provided in the last section, and sufficient reason therefor is shown, the court may order the action to be continued from time to time, and in the meantime may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to which the action is continued. En. February 14, 1872. Am'd. 1880, 29.

Cal. Rep. Cit. 54, 413.

Crim. Prac. Act, sec. 595. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 19, 550.

§ 1384. **If action dismissed, defendant to be discharged, etc.** If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him. En. February 14, 1872.

Cal. Rep. Cit. 54, 414.

Crim. Prac. Act, sec. 596. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1385. **Dismissed on motion of court or application of district attorney.** The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order an action or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes. En. February 14, 1872.

Cal. Rep. Cit. 48, 253; 64, 263; 71, 546; 85, 590; 127, 64; 130, 75; 132, 16; 143, 599; 144, 635.

Crim. Prac. Act, sec. 597. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1386. **Nolle prosequi abolished.** The entry of a nolle prosequi is abolished, and neither the attorney-general nor the district attorney can discontinue or abandon a prosecution for a public offense, except as provided in the last section. En. February 14, 1872.

Cal. Rep. Cit. 85, 590.

Crim. Prac. Act, sec. 598. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1387. **Dismissal of actions, order for a bar in misdemeanor, but not in felony.** An order for the dismissal of the action, as provided in this chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor, unless such order is explicitly made for the purpose of amending the complaint in such action, in which instance such order for dismissal of the action shall not act as a bar to a prosecution upon such amended complaint; but an order for the dismissal of the action is not a bar if the offense is a felony. En. February 14, 1872. Am'd. 1905, 724.

Inserts in the section relating to an order for dismissal being a bar in cases of misdemeanor, a provision that where the order explicitly is made for the purpose of allowing an amended complaint to be filed, the order for dismissal shall not constitute a bar. This revision corrects a manifest abuse. The bill is earnestly urged by the district attorney of Napa county.—Code Commissioner's Note.

Cal. Rep. Cit. 48, 253; 52, 464; 64, 263; 123, 455; 127, 64; 130, 75; 132, 16; 136, 295; 136, 299; 143, 599; 144, 481.

Crim. Prac. Act, sec. 599. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1388. **Judgment suspended in the case of a minor, when.** Final judgment may be suspended on any conviction, charge, or prosecution of a minor, for misdemeanor or felony, where in the judgment of the court in which such proceeding is pending there is reasonable ground to believe that such minor may be reformed, and that a commitment to prison would work manifest injury in the premises. Such suspension may be for as long a period as the circumstances of the case may seem to warrant, and subject to the following further provisions: During the period of such suspension, or

of any extension thereof, the court or judge may, under such limitations as may seem advisable, commit such minor to the custody of the officers or managers of any strictly non-sectarian charitable corporation conducted for the purpose of reclaiming criminal minors. Such corporation, by its officers or managers, may accept the custody of such minor for a period of two months (to be further extended by the court or judge should it be deemed advisable), and should said minor be found incorrigible and incapable of reformation, he may be returned before the court for final judgment for his offense. Such charitable corporation must accept the custody of said minor as aforesaid, upon the distinct agreement that it and its officers will use all reasonable means to effect the reformation of such minor, and provide him with a home and instruction. No application for guardianship of such minor by any person, parent, or friend can be entertained by any court during the period of such suspension, and custody, save upon recommendation of the court before which the criminal proceedings are pending. Such court may further, in its discretion, direct the payment of the expenses of the maintenance of such minor during such period of two months, not to exceed, in the aggregate, the sum of twenty-five dollars, which sum includes board, clothing, transportation, and all other expenses, to be paid by the county where such criminal proceeding is pending, or direct action to be instituted for the recovery thereof out of the estate of such minor, or from his parents. Such court may also revoke such order of suspension at any time. En. Stats. 1883, 377. Am'd. 1905, 704.

The change consists in the insertion of the words "of a minor," after "prosecution," and in the insertion of the word "the" before "custody."—Code Commissioner's Note.

Cal. Rep. Cit. 71, 628; 71, 631; 71, 633; 93, 640; 113, 588.

§ 1389. Prohibiting minors to visit houses of ill-fame. En. Stats. 1887, 119. Rep. 1905, 761.

The matter now in section 1389, which incorrectly stands in a chapter entitled "Dismissal of the Action," is put into a new section designated as 273e, and is put in its proper chapter, with the other sections relative to children, and section 1389 accordingly repealed.—Code Commissioner's Note.

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## CHAPTER IX.

## PROCEEDINGS AGAINST CORPORATIONS.

- § 1390. Summons upon information against corporation.
- § 1391. Form of summons.
- § 1392. When and how served.
- § 1393. Examination of the charge.
- § 1394. Certificate of magistrate and return of depositions.
- § 1395. Grand jury to investigate if there is sufficient cause.
- § 1396. Appearance and plea.
- § 1397. Fine on conviction, how collected.

§ 1390. Summons upon information against corporation.

Upon an information or presentment against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons. En. February 14, 1872.

§ 1391. **Form of summons.** The summons must be substantially in the following form:

County of [as the case may be]: •

The people of the state of California to the [naming the corporation]:

You are hereby summoned to appear before me at [naming the place], on [specifying the day and hour], to answer a charge made against you upon the information of A. B. [or the presentment of the grand jury of the county, as the case may be], for [designating the offense generally].

Dated at the city [or township] of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, eighteen \_\_\_\_\_.

G. H., justice of the peace, [or as the case may be]. En.  
February 14, 1872.

§ 1392. When and how served. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to

the secretary, cashier, or managing agent thereof. En. February 14, 1872.

§ 1393. **Examination of the charge.** At the appointed time in the summons, the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable. En. February 14, 1872.

§ 1394. **Certificate of magistrate and return of depositions.** After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the deposition and certificate, as prescribed in section 883. En. February 14, 1872.

§ 1395. **Grand jury to investigate if there is sufficient cause.** If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed, or the district attorney file an information thereon, as in case of a natural person held to answer. En. February 14, 1872. Am'd. 1880, 29.

§ 1396. **Appearance and plea.** If an indictment is found, or information filed, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases. En. February 14, 1872. Am'd. 1880, 29.

§ 1397. **Fine on conviction, how collected.** When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action. En. February 14, 1872.

## CHAPTER X.

## ENTITLING AFFIDAVITS.

§ 1401. Affidavits defectively entitled, valid.

§ 1401. **Affidavits defectively entitled, valid.** It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment or information, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, information, or appeal in which it is made. En. February 14, 1872. Am'd. 1880, 30.

Crim. Prac. Act, sec. 600. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## CHAPTER XI.

## ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS.

§ 1404. When not material.

§ 1404. **When not material.** Neither a departure from the form or mode prescribed by this code in respect to any pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right. En. February 14, 1872.

Cal. Rep. Cit. 48, 559; 49, 390; 53, 494; 57, 90; 57, 98; 57, 99; 57, 100; 59, 384; 62, 520; 62, 521; 64, 213; 64, 372; 64, 426; 67, 56; 93, 583; 94, 119; 96, 319; 102, 242; 115, 306; 116, 198; 120, 663; 133, 124; 138, 536; 139, 117.

Crim. Prac. Act, sec. 601. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 28, 329; 28, 331; 33, 101; 62, 520.

## CHAPTER XII.

## DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

- § 1407. Peace officer must hold property subject to the order of magistrate.
- § 1408. Order for its delivery to owner.
- § 1409. Magistrate must deliver it to owner.
- § 1410. Court in which trial is had may order its delivery.
- § 1411. Delivered to county treasurer if not claimed in six months.
- § 1412. Receipt for money, etc., taken from person arrested.
- § 1413. Record of property alleged to be stolen.

§ 1407. **Peace officer must hold property subject to the order of magistrate.** When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof. En. February 14, 1872.

Crim. Prae. Act, sec. 602. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1408. **Order for its delivery to owner.** On satisfactory proof of the ownership of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling it, must order it to be delivered to the owner, on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property. En. February 14, 1872.

Crim. Prae. Act, sec. 603. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1409. **Magistrate must deliver it to owner.** If property stolen or embezzled comes into custody of the magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. En. February 14, 1872.

Crim. Prae. Act, sec. 604. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1410. **Court in which trial is had may order its delivery.** If the property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner. En. February 14, 1872.

Crim. Prac. Act, sec. 605. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1411. **Delivered to county treasurer if not claimed in six months.** If the property stolen or embezzled is not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody must, on the payment of the necessary expenses incurred in its preservation, deliver it to the county treasurer, by whom it must be sold and the proceeds paid into the county treasury. En. February 14, 1872.

Crim. Prac. Act, sec. 606. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1412. **Receipt for money, etc., taken from person arrested.** When money or other property is taken from a defendant, arrested upon a charge of a public offense, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant and the other of which he must forthwith file with the clerk of the court to which the depositions and statement are to be sent. When such property is taken by a police officer of any incorporated city or town, he must deliver one of the receipts to the defendant, and one, with the property, at once to the clerk or other person in charge of the police office in such city or town. En. February 14, 1872.

Crim. Prac. Act, sec. 607. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.



§ 1413. **Record of property alleged to be stolen.** The clerk in, or person having charge of, the police office in any incorporated city or town, must enter in a suitable book a description of every article of property alleged to be stolen or embezzled, and brought into the office or taken from the embezzled, and brought into the office or taken from the person of a prisoner, and must attach a number to each article, and make a corresponding entry thereof. En. February 14, 1872.

## CHAPTER XIII.

### REPRIEVES, COMMUTATIONS AND PARDONS.

- § 1417. Governor may grant reprieves, commutations, and pardons.
- § 1418. His power in respect to convictions for treason.
- § 1419. To communicate to the legislature reprieves, commutations, and pardons.
- § 1420. Report of case, how and from whom required.
- § 1421. Notice to district attorney of application for pardon.
- § 1422. Publication of notice.
- § 1423. When two preceding sections are not applicable.

§ 1417. **Governor may grant reprieves, commutations, and pardons.** The governor has power to grant reprieves, commutations, and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to the regulations provided in this chapter. En. February 14, 1872.

Cal. Rep. Cit. 68, 180.

Pardoning power: See Fed. Const., art. II, sec. 2, subd. 1; Const. Cal., art. VII, sec. 1.

§ 1418. **His power in respect to convictions for treason.** He may suspend the execution of the sentence, upon a conviction for treason, until the case can be reported to the legislature at its next meeting, when the legislature may either pardon, direct the execution of the sentence, or grant a further reprieve; provided, that neither the governor nor the legislature shall have power to grant

pardons or commutations of sentence in any case where the convict has been twice convicted of felony, after the first day of January, eighteen hundred and eighty, unless upon the written recommendation of a majority of the judges of the supreme court. En. February 14, 1872. Am'd. 1880, 2.

Cal. Rep. Cit. 68, 180.

§ 1419. **To communicate to the legislature reprieves, commutations, and pardons.** He must, at the beginning of every session, communicate to the legislature each case of reprieve, commutation, or pardon, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve, and the reasons for granting the same. En. February 14, 1872. Am'd. 1880, 3.

§ 1420. **Report of case, how and from whom required.** When an application is made to the governor for a pardon, he may require the judge of the court before which the conviction was had or the district attorney by whom the action was prosecuted, to furnish him, without delay, with a statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting or refusing the pardon. En. February 14, 1872.

Cal. Rep. Cit. 68, 180.

§ 1421. **Notice to district attorney of application for pardon.** At least ten days before the governor acts upon an application for a pardon, written notice of the intention to apply therefor, signed by the person applying, must be served upon the district attorney of the county where the conviction was had, and proof, by affidavit, of the service must be presented to the governor. En. February 14, 1872.

§ 1422. **Publication of notice.** Unless dispensed with by the governor, a copy of the notice must also be published

for thirty days from the first publication, in a paper in the county in which the conviction was had. En. February 14, 1872.

§ 1423. When two preceding sections are not applicable. The provisions of the two preceding sections are not applicable—

1. When there is imminent danger of the death of the person convicted or imprisoned.

2. When the term of imprisonment of the applicant is within ten days of its expiration. En. February 14, 1872.

## TITLE XI.

### OF PROCEEDINGS IN JUSTICES' AND POLICE COURTS, AND APPEALS TO SUPERIOR COURTS.

Chapter I. Proceedings in Justices' and Police Courts, §§ 1425-1461.

II. Appeals to Superior Courts, §§ 1466-1470.

#### CHAPTER I.

##### PROCEEDINGS IN JUSTICES' AND POLICE COURTS.

- § 1425. Jurisdiction of justices' courts.
- § 1426. Proceedings must be commenced by complaint.
- § 1427. When warrant of arrest must issue. Form of warrant; in case of offense by corporation.
- § 1428. Minutes, how kept.
- § 1429. The plea, and how put in.
- § 1430. Issue, how tried.
- § 1431. Change of venue, when granted.
- § 1432. Proceedings on change of venue.
- § 1433. Postponement of the trial.
- § 1434. Defendant to be present.
- § 1435. Jury trial, how waived.
- § 1436. Challenges.
- § 1437. Oath of jurors.
- § 1438. Trial, how conducted.
- § 1439. Court to decide questions of law, but not of fact.
- § 1440. Jury may decide in court, or retire.
- § 1441. Verdict of jury, how delivered and entered.
- § 1442. Verdict, when several defendants are tried together.
- § 1443. Jury, when to be discharged without a verdict.

- § 1444. If discharged, defendant may be tried again.
- § 1445. Proceedings on plea of guilty, or on conviction.
- § 1446. Judgment of fine may direct imprisonment.
- § 1447. Defendant, on acquittal, to be discharged. Costs.
- § 1448. Judgment against prosecutor for costs.
- § 1449. Judgment, when to be rendered.
- § 1450. Motion for a new trial, or in arrest of judgment.
- § 1451. New trial, grounds of.
- § 1452. Grounds of motion in arrest of judgment.
- § 1453. Judgment to be entered in the minutes.
- § 1454. Discharge of defendant on judgment of acquittal or fine only.
- § 1455. Judgment of imprisonment, how executed.
- § 1456. Judgment of imprisonment until fine is paid, how executed.
- § 1457. Defendant must be discharged on payment of fine, disposition of fine.
- § 1458. Defendant may be admitted to bail.
- § 1459. Subpoenas.
- § 1460. Entitling affidavits.
- § 1461. "Police courts" defined.

§ 1425. **Jurisdiction of justices' courts.** The justices' courts have jurisdiction of the following public offenses committed within the respective counties in which such courts are established:

1. Petit larceny;
2. Assault or battery not charged to have been committed upon a public officer in the discharge of his duties, or to have been committed with such intent as to render the offense a felony;
3. Breaches of the peace, riots, routs, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment. En. Stats. 1905, 705.

This section now contains the matter now in section 115 of the Code of Civil Procedure.—Code Commissioner's Note.

§ 1426. **Proceedings must be commenced by complaint.** All proceedings and actions before a justice's or police court, for a public offense of which such courts have jurisdiction, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person, and property as to enable the defendant

to understand distinctly the character of the offense complained of, and to answer the complaint. En. February 14, 1872.

Cal. Rep. Cit. 54, 409; 55, 228; 60, 105; 60, 106; 65, 615; 106, 408; 109, 450.

Crim. Prac. Act, sec. 608. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Police courts, organization, etc.: See Pol. Code, secs. 4424 et seq.

Justices' courts, organization, etc.: See Code Civ. Proc., secs. 85 et seq.

Police judge, provisions relating to: See Pol. Code, secs. 4424-4432.

Jurisdiction of police court over various offenses: See Pol. Code, sec. 4426.

§ 1427. **When warrant of arrest must issue; form of warrant; in case of offense by corporation.** If the justice of the peace, or police judge, is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

“County of ———.

“The people of the State of California to any sheriff, constable, marshal, or policeman in this state:

“Complaint upon oath having been this day made before me, ——— (justice of the peace or police judge, as the case may be), by C. D., that the offense of (designating it generally) has been committed, and accusing E. F. thereof; you are therefore commanded forthwith to arrest the above named E. F. and bring him before me forthwith, at (naming the place).

“Witness my hand and seal at ———, this ——— day of ———, A. D. ———.

“A.B.”

If it appears that the offense complained of has been committed by a corporation, no warrant of arrest need issue, but the justice of the peace or police judge must issue a summons substantially in the form prescribed in section thirteen hundred and ninety-one. Such summons must be served at the time and in the manner designated in section thirteen hundred and ninety-two. At the time named in the summons the corporation may appear by counsel and answer the complaint. If it does not appear, a plea of not guilty must be entered, and the same proceedings had therein as in other cases. En. February 14, 1872. Am'd. 1905, 706.

The changes consist in the matter providing a mode for compelling a corporation to appear in response to a complaint accusing it of a misdemeanor.—Code Commissioner's Note.

Cal. Rep. Cit. 60, 105.

Crim. Prac. Act, sec. 610. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Arrest by peace officer: Ante, sec. 836.

Arrest by private person: Ante, sec. 837.

Arrest by oral order of magistrate: Ante, sec. 838.

Duty of officer or person making arrest: Ante, secs. 847, 848.

Warrant of arrest, form of: Ante, sec. 814.

§ 1428. **Minutes, how kept.** A docket must be kept by the justice of the peace or police justice, or by the clerk of the courts held by them, if there is one, in which must be entered each action and the proceedings of the court therein. En. February 14, 1872.

Cal. Rep. Cit. 55, 228; 94, 499.

Crim. Prac. Act, sec. 613. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1429. **The plea, and how put in.** The defendant may make the same plea as upon an indictment, as provided in section ten hundred and sixteen. His plea must be oral,

and entered in the minutes. If the defendant plead guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appear to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury, or any information which may be filed by the district attorney. En. February 14, 1872. Am'd. 1873-4, 453; 1880, 30.

Cal. Rep. Cit. 60, 105.

Crim. Prac. Act, sec. 611. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1860, 71.

Pleas: See ante, sec. 1016.

§ 1430. **Issue, how tried.** Upon a plea other than a plea of guilty, if the parties waive a trial by jury, and an adjournment or change of venue is not granted, the court must proceed to try the case. En. February 14, 1872. Am'd. 1880, 5.

Cal. Rep. Cit. 92, 576.

Crim. Prac. Act, sec. 614. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Jury trial, how waived: Post, sec. 1435.

§ 1431. **Change of venue, when granted.** If the action or proceeding is in a justice's court, a change of the place of trial may be had at any time before the trial commences—

1. When it appears from the affidavit of the defendant that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the justice about to try the case, by reason of the prejudice or bias of such justice, the cause must be transferred to another justice of the same or an adjoining township.

2. When it appears from affidavits that the defendant cannot have a fair and impartial trial, by reason of the prejudice of the citizens of the township, the cause must be transferred to a justice of the township where the same prejudice does not exist. En. February 14, 1872.

Cal. Rep. Cit. 85, 602; 119, 402.

Change of venue: Ante, secs. 1033, 1034.

§ 1432. **Proceedings on change of venue.** When a change of the place of trial is ordered, the justice must transmit to the justice before whom the trial is to be had all the original papers in the cause, with a certified copy of the minutes of his proceedings; and upon receipt thereof, the justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his court. En. February 14, 1872.

Transfer of records, etc., of the action: Ante, sec. 1036.

Duty of court on receipt of records: Ante, sec. 1038.

§ 1433. **Postponement of the trial.** Before the commencement of a trial in any of the courts mentioned in this chapter, either party may, upon good cause shown, have a reasonable postponement thereof. En. February 14, 1872.

Cal. Rep. Cit. 66, 396.

§ 1434. **Defendant to be present.** The defendant must be personally present before the trial can proceed. En. February 14, 1872.

Crim. Prac. Act, sec. 612. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Presence of defendant: See ante, sec. 1043.

§ 1435. **Jury trial, how waived.** A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket. The formation of the



jury is provided for in chapter one, title three, part one, of the Code of Civil Procedure. En. February 14, 1872. Am'd. 1880, 5.

Cal. Rep. Cit. 92, 576.

Constitutional provision.—“A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, expressed in open court. . . . In cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court”: Const. Cal., art. 1, sec. 7.

§ 1436. **Challenges.** The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as on the trial of an indictment for a misdemeanor; but the challenge must in all cases be tried by the court. En. February 14, 1872.

Crim. Prac. Act, sec. 615. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

General causes of challenge: Ante, sec. 1072.

Particular causes of challenge: Ante, sec. 1073.

Challenge to individual juror: Ante, sec. 1067.

Challenge to the panel of jurors: Ante, sec. 1058.

Number of peremptory challenges: Ante, sec. 1070.

§ 1437. **Oath of jurors.** The court must administer to the jury the following oath: “You do swear that you will well and truly try this issue between the people of the state of California and A B, the defendant, and a true verdict render according to the evidence.” En. February 14, 1872.

Crim. Prac. Act, sec. 616. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1438. **Trial, how conducted.** After the jury are sworn, they must sit together and hear the proofs and allegations of the parties which must be delivered in public and in the presence of the defendant. En. February 14, 1872.

Crim. Prac. Act, sec. 617. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Conduct of the trial: Ante, sec. 1093.

§ 1439. **Court to decide questions of law, but not of fact.** The court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact. En. February 14, 1872.

Crim. Prac. Act, sec. 618. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See ante, secs. 1124-1127.

Duty of court in charging the jury: Ante, sec. 1127.

Questions of fact.—Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law: Const. Cal., art. VI, sec. 19.

In case of libel: Ante, secs. 251, 1125.

§ 1440. **Jury may decide in court, or retire.** After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless by order of the court, or to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court." En. February 14, 1872.

Crim. Prac. Act, sec. 619. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Deliberations of the jury: Ante, sec. 1128.

§ 1441. **Verdict of jury, how delivered and entered.** The verdict of the jury must in all cases be general. When the jury have agreed on their verdict, they must deliver

it publicly to the court, who must enter, or cause it to be entered, in the minutes. En. February 14, 1872.

Crim. Prac. Act, sec. 620. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prae. Act, sec. 621. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Verdict, general and special: Ante, sec. 1151.

**§ 1442. Verdict, when several defendants are tried together.** When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury. En. February 14, 1872.

Crim. Prac. Act, sec. 622. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Verdict as to one of several defendants: Ante, sec. 1160.

**§ 1443. Jury, when to be discharged without a verdict.** The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them. En. February 14, 1872.

Crim. Prac. Act, sec. 623. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

See ante, secs. 1139, 1140.

**§ 1444. If discharged, defendant may be tried again.** If the jury is discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial, and so on, until a verdict is rendered. En. February 14, 1872.

Crim. Prac. Act, sec. 624. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Retrial: Ante, sec. 1141.

§ 1445. **Proceedings on plea of guilty, or on conviction.** When the defendant pleads guilty, or is convicted, either by the court, or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be. En. February 14, 1872. Am'd. 1873-4, 453.

Cal. Rep. Cit. 60, 435.

Crim. Prac. Act, sec. 625. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1446. **Judgment of fine may direct imprisonment.** A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, in the proportion of one days' imprisonment for every dollar of the fine. En. February 14, 1872. Am'd. 1873-4, 455.

Cal. Rep. Cit. 60, 434; 60, 435; 63, 300; 65, 156; 73, 495; 80, 203; 82, 455; 84, 166; 84, 167; 85, 38; 88, 625; 88, 626; 88, 627; 88, 629; 88, 630; 89, 473; 96, 364; 96, 365; 97, 528; 97, 529.

Crim. Prac. Act, sec. 626. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1447. **Defendant, on acquittal, to be discharged. Costs.** When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if the court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same within thirty days after the trial. En. February 14, 1872.

Crim. Prac. Act, sec. 627. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1448. **Judgment against prosecutor for costs.** If the prosecutor does not pay the costs, or give security therefor, the court may enter judgment against him for the

amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action. En. February 14, 1872.

Crim. Prac. Act, sec. 628. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1449. **Judgment, when to be rendered.** After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, unless the defendant waive the postponement. If postponed, the court may hold the defendant to bail to appear for judgment. En. February 14, 1872. Am'd. 1873-4, 454.

Cal. Rep. Cit. 62, 533; 63, 491.

Crim. Prac. Act, sec. 630. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1450. **Motion for a new trial, or in arrest of judgment.** At any time before judgment, defendant may move for a new trial or in arrest of judgment. En. February 14, 1872.

Crim. Prac. Act, sec. 631. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Motion in arrest of judgment: Ante, sec. 1185, and post, sec. 1452.

§ 1451. **New trial, grounds of.** A new trial may be granted in the following cases:

1. When the trial has been had in the absence of the defendants, unless he voluntarily absent himself, with full knowledge that a trial is being had.

2. When the jury has received any evidence out of court.

3. When the jury has separated without leave of the court, after having retired to deliberate upon their verdict,

or been guilty of any misconduct tending to prevent a fair and due consideration of the case.

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

5. When there has been error in the decision of the court, given on any question of law arising during the course of the trial.

6. When the verdict is contrary to law or evidence.

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial; but when a motion for a new trial is made upon this ground, the defendant must produce at the hearing the affidavits of the witnesses by whom such newly discovered evidence is expected to be given. En. February 14, 1872.

Crim. Prac. Act, sec. 632. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1863, 162.

New trials: See ante, secs. 1179, 1182.

§ 1452. **Grounds of motion in arrest of judgment.** The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had. En. February 14, 1872.

Crim. Prac. Act, sec. 633. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1453. **Judgment to be entered in the minutes.** If the judgment is not arrested, or a new trial granted judgment must be pronounced at the time appointed and entered in the minutes of the court. En. February 14, 1872.

Crim. Prac. Act, sec. 634. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Judgment, rendition of: Ante, sec. 1445.

§ 1454. **Discharge of defendant on judgment of acquittal or fine only.** If judgment of acquittal is given, or judgment imposing a fine only, without imprisonment for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given. En. February 14, 1872.

Crim. Prac. Act, sec. 635. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1455. **Judgment of imprisonment, how executed.** When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff, marshal, or other officer, which is a sufficient warrant for its execution. En. February 14, 1872.

Crim. Prac. Act, sec. 636. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Execution: See ante, sees. 1213, 1216.

§ 1456. **Judgment of imprisonment until fine is paid, how executed.** When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid. En. February 14, 1872.

Cal. Rep. Cit. 54, 206; 64, 438; 82, 455.

Crim. Prac. Act, sec. 637. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Execution of judgment of fine or imprisonment: Ante, sec. 1215.

§ 1457. **Defendant discharged upon payment of fine; disposition of fine.** Upon payment of the fine, the officer must discharge the defendant, if he is not detained for any other legal cause, and pay over the fine within ten days to county treasurer if the offense is prosecuted for the violation of a state law in a justice's court; provided that all fines and forfeitures collected in any police court or city

justice's court that is maintained, and the salaries of the officers thereof paid by the city, whether prosecuted for a violation of a state law or a city ordinance shall be paid to the city treasurer of the city in which such court is located; and further provided, that all fines and forfeitures collected for the violation of a city or town ordinance, in a justice's court shall be paid over to the city or town treasurer of the city or town in which such ordinance is in force, subject, however, to the provisions of Chapter I of Title XV of Part I of this code. En. February 14, 1872. Am'd. 1901, 88; 1905, 177.

Disposition of fines: See post, § 1570.

Cal. Rep. Cit. 65, 478; 88, 411.

Crim. Prac. Act, sec. 638. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 45, 246.

Crim. Prac. Act, sec. 639. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Disposition of fines: Post, sec. 1570.

§ 1458. **Defendant may be admitted to bail.** The defendant, at any time after his arrest, and before conviction, may be admitted to bail. The provisions of this code relative to bail are applicable to bail in justices' or police courts. En. February 14, 1872.

Crim. Prac. Act, sec. 640. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Bail: Ante, secs. 822, 1268 et seq.

§ 1459. **Subpoenas.** The justice or judge of either of the courts mentioned in this chapter may issue subpoenas for witnesses, as provided in section thirteen hundred and twenty-six, and punish disobedience thereof, as provided in section one thousand three hundred and thirty-one. En. February 14, 1872.

Witness must attend: Code Civ. Proc., sec. 2064.



**1467.** The appeal may be taken, heard and determined as provided in title 9, part 2 of this code, except that, such appeal must be taken within fifteen days after the judgment is rendered or within ten days after the order is made from which the appeal is taken. (In effect 60 days from and after March 18, 1907.)



§ 1460. **Entitling affidavits.** The provisions of section one thousand four hundred and one, in respect to entitling affidavits, are applicable to proceedings in the courts mentioned in this chapter. En. February 14, 1872.

§ 1461. **“Police courts” defined.** The term “police courts,” as used in this and the succeeding chapter, includes police judges’ courts, police courts, and all courts held by mayors or recorders in incorporated cities or towns. En. February 14, 1872.

Cal. Rep. Cit. 66, 5; 88, 410.

## CHAPTER II.

### APPEALS TO SUPERIOR COURTS.

§ 1466. Appeals, when allowed.

§ 1467. Appeals, how taken, heard, and determined.

§ 1468. Statement on appeal.

§ 1469. If new trial granted, in what court had.

§ 1470. Proceedings, if appeal is dismissed or judgment affirmed.

§ 1466. **Appeals, when allowed.** Either party may appeal to the superior court of the county from a judgment of a justice’s or police court, in like cases and for like cause as appeals may be taken to the supreme court. En. February 14, 1872. Am’d. 1880, 34.

Cal. Rep. Cit. 66, 401; 82, 615; 92, 574.

Appeal by defendant: Ante, sec. 1237.

Appeal by the people: Ante, sec. 1238.

§ 1467. **Appeals, how taken, heard, and determined.** The appeal is taken, heard, and determined as provided in title IX, part II, of this code. En. February 14, 1872.

Cal. Rep. Cit. 72, 16; 82, 615.

Appeal, how taken: Ante, sec. 1240.

Judgment on appeal: Ante, sec. 1258.

§ 1468. **Statement on appeal.** The appeal to the superior court from the judgment of a justice’s or police court is

heard upon a statement of the case settled by the justice or police judge, embodying such rulings of the court as are excepted to, which statement must be filed with and settled by the court within ten days after filing notice of appeal. En. February 14, 1872. Am'd. 1880, 35.

§ 1469. If new trial granted, in what court had. If a new trial is granted upon appeal, it must be had in the superior court. En. February 14, 1872. Am'd. 1880, 35.

Cal. Rep. Cit. 72, 15; 92, 574.

§ 1470. Proceedings, if appeal is dismissed or judgment affirmed. If the appeal is dismissed or the judgment affirmed, a copy of the order of dismissal or judgment of affirmance must be remitted to the court below, which may proceed to enforce its sentence. En. February 14, 1872. Am'd. 1901, 88.

Cal. Rep. Cit. 54, 345; 101, 304.

## TITLE XII.

## OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

Chapter 1. Of the Writ of Habeas Corpus, §§ 1473-1505.

II. Of Coroners' Inquests and Duties of Coroners, §§ 1510-1519.

III. Of Search-Warrants, §§ 1523-1542.

IV. Proceedings against Fugitives from Justice, §§ 1547-1558.

V. Miscellaneous Provisions Respecting Special Proceedings of a Criminal Nature, §§ 1562-1564.

## CHAPTER I.

## OF THE WRIT OF HABEAS CORPUS.

- § 1473. Who may prosecute writ.
- § 1474. Application for, how made.
- § 1475. By whom issued, and before whom returnable.
- § 1476. Writ must be granted without delay; admitted to bail pending determination.
- § 1477. Writ, what to contain.
- § 1478. How served.
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- § 1481. Body must be produced, when.
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- § 1495. Defect of form in the writ immaterial, when.
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- § 1497. Warrant may issue instead of writ, in certain cases.
- § 1498. Warrant may include person charged with illegal detention.
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§ 1502. Writ and process may issue at any time.

§ 1503. By whom issued and when returnable.

§ 1504. Where returnable.

§ 1505. Damages for failure to issue or obey the writ.

§ 1473. **Who may prosecute writ.** Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint. En. February 14, 1872. Am'd. 1873-4, 454.

Cal. Rep. Cit. 126, 616.

Privilege of, not to be suspended.—The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension: Const. Cal., art. I, sec. 5; U. S. Const., art. I, sec. 9.

Right to, where one detained as insane: See Pol. Code, sec. 1473.

§ 1474. **Application for, how made.** Application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and must specify—

1. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming all the parties, if they are known, or describing them, if they are not known.

2. If the imprisonment is alleged to be illegal, the petition must also state in what the alleged illegality consists.

3. The petition must be verified by the oath or affirmation of the party making the application. En. February 14, 1872.

§ 1475. **By whom issued, and before whom returnable.** The writ of habeas corpus may be granted:

1. By the supreme court, or any justice thereof, upon petition by or on behalf of any person restrained of his liberty in this state. When so issued it may be made returnable before the court, or any justice thereof, or before any superior court, or any judge thereof;

2. By the superior court, or a judge thereof, upon petition by or on behalf of any person restrained of his liberty,

1475. The writ of habeas corpus may be granted in the manner provided by the constitution. If the writ has been granted by any court or a judge or justice thereof, and after the hearing thereof the prisoner has been remanded, he shall not be discharged from custody by the same or any other court of like general jurisdiction, or by a judge or justice of the same or any other court of like general jurisdiction, unless upon some ground not existing in fact at the issuing of the prior writ.

Should the prisoner desire to urge some point of law not raised in the petition for or at the hearing upon the return of the prior writ, then, in case such prior writ had been returned or returnable before a superior court or a judge thereof, no writ can be issued upon a second or other application except by the appropriate district court of appeal or some justice thereof, or by the supreme court or some judge thereof, and in such an event such writ must not be made returnable before any superior court or any judge thereof.

In the event, however, that the prior writ was returned or made returnable before a district court of appeal or any justice thereof, no writ can be issued upon a second or other application except by the supreme court or some judge thereof, and such writ must be made returnable before said supreme court or some judge thereof.

Every application for a writ of habeas corpus must be verified, and shall state whether any prior application or applications have been made for a writ in regard to the same detention or restraint complained of in the application, and if any such prior application or applications have been made the later application must contain a brief statement of all proceedings had therein, or in any of them, to and including the final order or orders made therein, or in any of them, on appeal or otherwise.

Whenever the person applying for a writ of habeas corpus is held in custody or restraint by any officer of any court of this state or any political subdivision thereof or by any peace officer of this state or any political subdivision thereof, a copy of the application for such writ must in all cases be served upon the district attorney of the county wherein such person is held in custody or restraint at least twenty-four hours before the time at which said writ is made returnable and no application for such writ can be heard without proof of such service in cases where such service is required. (In effect 60 days from and after March 18, 1907.)





in their respective counties. If the writ has been granted by any superior court or judge, and after the hearing thereof the prisoner has been remanded, he shall not be discharged from custody by the same or any other superior court or judge, unless upon some ground not existing at the issuing of the prior writ, or unless upon some point of law not raised at the hearing upon the return of the prior writ. En. February 14, 1872. Am'd. 1880, 4; 1905, 706.

The change consists in the addition of the last sentence in subdivision 2. The purpose of the amendment is to prevent one who, after a hearing upon habeas corpus has been remanded to custody, from applying thereafter to the same or another superior court or judge, unless upon some ground not existing at the issuing of the prior writ, or unless upon some point of law not raised at the hearing upon the return of the prior writ.—Code Commissioner's Note.

**§ 1476. Writ must be granted without delay; admitted to bail pending determination.** Any court or judge authorized to grant the writ, to whom a petition therefor is presented, must, if it appear that the writ ought to issue, grant the same without delay; and if the person by or upon whose behalf the application for the writ is made be detained upon a criminal charge, may admit him to bail, if the offense is bailable, pending the determination of the proceeding. En. February 14, 1872. Am'd. 1905, 476.

**§ 1477. Writ, what to contain.** The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him to have the body of such person before the court or judge before whom the writ is returnable, at a time and place therein specified. En. February 14, 1872.

**§ 1478. How served.** If the writ is directed to the sheriff or other ministerial officer of the court out of which it issues, it must be delivered by the clerk to such officer without delay, as other writs are delivered for service. If it is directed to any other person, it must be delivered to the sheriff, and be by him served upon such person by delivering the same to him without delay. If the person to whom the writ is directed cannot be found, or refuses admittance to the officer or person serving or delivering such writ, it may be served or delivered by leaving it at the residence of the person to whom it is directed, or by affixing it to some conspicuous place on the outside either of

his dwelling-house or of the place where the party is confined or under restraint. En. February 14, 1872.

Cal. Rep. Cit. 77, 160.

**§ 1479. Proceedings upon disobedience to the writ.** If the person to whom the writ is directed refuses, after service, to obey the same, the court or judge, upon affidavit, must issue an attachment against such person, directed to the sheriff or coroner, commanding him forthwith to apprehend such person and bring him immediately before such court or judge; and upon being so brought, he must be committed to the jail of the county until he makes due return to such writ, or is otherwise legally discharged. En. February 14, 1872.

**§ 1480. Return, what to contain.** The person upon whom the writ is served must state in his return, plainly and unequivocally:

1. Whether he has or has not the party in his custody, or under his power or restraint.

2. If he has the party in his custody or power, or under his restraint, he must state the authority and cause of such imprisonment or restraint.

3. If the party is detained by virtue of any writ, warrant, or other written authority, a copy thereof must be annexed to the return, and the original produced and exhibited to the court or judge on the hearing of such return.

4. If the person upon whom the writ is served had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred such custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority, such transfer took place.

5. The return must be signed by the person making the same, and, except when such person is a sworn public officer, and makes such return in his official capacity, it must be verified by his oath. En. February 14, 1872.

Cal. Rep. Cit. 71, 238.

**§ 1481. Body must be produced, when.** The person to whom the writ is directed, if it is served, must bring the

body of the party in his custody or under his restraint, according to the command of the writ, except in the cases specified in the next section. En. February 14, 1872.

No fee to be charged for services in proceedings: See Pol. Code, sec. 4333.

§ 1482. **Hearing without production of the body.** When, from sickness or infirmity of the person directed to be produced, he cannot, without danger, be brought before the court or judge, the person in whose custody or power he is may state that fact in his return to the writ, verifying the same by affidavit. If the court or judge is satisfied of the truth of such return, and the return to the writ is otherwise sufficient, the court or judge may proceed to decide on such return and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced. En. February 14, 1872.

§ 1483. **Hearing on return.** The court or judge before whom the writ is returned must, immediately after the return, proceed to hear and examine the return, and such other matters as may be properly submitted to their hearing and consideration. En. February 14, 1872.

§ 1484. **Proceedings on the hearing.** The party brought before the court or judge, on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge. The court or judge must thereupon proceed in a summary way to hear such proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require, and have full power and authority to require and compel the attendance of witnesses, by process of subpoena and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case. En. February 14, 1872.

Cal. Rep. Cit. 59, 422; 92, 190; 126, 619.

§ 1485. **When court may discharge the party.** If no legal cause is shown for such imprisonment or restraint,

or for the continuation thereof, such court or judge must discharge such party from the custody or restraint under which he is held. En. February 14, 1872.

§ 1486. **When to remand party.** The court or judge, if the time during which such party may be legally detained in custody has not expired, must remand such party, if it appears that he is detained in custody:

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or,

2. By virtue of the final judgment or decree of any competent court of criminal jurisdiction, or of any process issued upon such judgment or decree. En. February 14, 1872.

Cal. Rep. Cit. 49, 162; 89, 427.

§ 1487. **Grounds of discharge in certain cases.** If it appears on the return of the writ that the prisoner is in custody by virtue of process from any court of this state, or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restrictions of the last section:

1. When the jurisdiction of such court or officer has been exceeded.

2. When the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge.

3. When the process is defective in some matter of substance required by law, rendering such process void.

4. When the process, though proper in form, has been issued in a case not allowed by law.

5. When the person having the custody of the prisoner is not the person allowed by law to detain him.

6. Where the process is not authorized by any order, judgment, or decree of any court, nor by any provision of law.

7. Where a party has been committed on a criminal charge without reasonable or probable cause. En. February 14, 1872:

Cal. Rep. Cit. 64, 156; 82, 246; 82, 247.

**§ 1488. Not to be discharged for defect of form in warrant.** If any person is committed to prison, or is in custody of any officer on any criminal charge, by virtue of any warrant of commitment of a justice of the peace, such person must not be discharged on the ground of any mere defect of form in the warrant of commitment. En. February 14, 1872.

Cal. Rep. Cit. 85, 310; 92, 426.

**§ 1489. Proceedings on defective warrant.** If it appears to the court or judge, by affidavit or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to the court or judge, that the party is guilty of a criminal offense, or ought not to be discharged, such court or judge, although the charge is defective or unsubstantially set forth in such process or warrant of commitment, must cause the complainant or other necessary witnesses to be subpoenaed to attend at such time as ordered, to testify before the court or judge; and upon the examination he may discharge such prisoner, let him to bail, if the offense be bailable, or recommit him to custody, as may be just and legal. En. February 14, 1872.

Cal. Rep. Cit. 49, 437.

**§ 1490. Writ for purposes of bail.** When a person is imprisoned or detained in custody on any criminal charge, for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined. En. February 14, 1872.

Cal. Rep. Cit. 54, 103; 92, 189.

**§ 1491. Judge may take bail.** Any judge before whom a person who has been committed on a criminal charge may be brought on a writ of habeas corpus, if the same is bailable, may take an undertaking of bail from such person as in other cases, and file the same in the proper court. En. February 14, 1872.

Cal. Rep. Cit. 54, 103; 92, 189.

**§ 1492. Judge, when to remand.** If a party brought before the court or judge on the return of the writ is not entitled to his discharge, and is not bailed, where such bail is

allowable, the court or judge must remand him to custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was is legally entitled thereto. February 14, 1872.

Cal. Rep. Cit. 54, 103.

§ 1493. **Person in illegal, may be committed to legal custody.** In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, the judge or court may order such party to be committed to the restraint or custody of such person as is by law entitled thereto. En. February 14, 1872.

Cal. Rep. Cit. 126, 619; 128, 31; 135, 341.

§ 1494. **Disposition of party, pending proceedings on return.** Until judgment is given on the return, the court or judge before whom any party may be brought on such writ may commit him to the custody of the sheriff of the county, or place him in such care or under such custody as his age or circumstances may require. En. February 14, 1872.

§ 1495. **Defect of form in the writ immaterial, when.** No writ of habeas corpus can be disobeyed for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the court or judge before whom he is to be brought. En. February 14, 1872.

§ 1496. **Imprisonment after discharge, when permitted.** No person who has been discharged by the order of the court or judge upon habeas corpus can be again imprisoned, restrained, or kept in custody for the same cause, except in the following cases:

1. If he has been discharged from custody on a criminal charge, and is afterwards committed for the same offense, by legal order or process.

2. If, after a discharge for defect of proof, or for any defect of the process, warrant, or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the same offense. En. February 14, 1872.

Cal. Rep. Cit. 64, 156; 136, 295.

§ 1497. **Warrant may issue instead of writ, in certain cases.** When it appears to any court, or judge, authorized by law to issue the writ of habeas corpus, that any one is illegally held in custody, confinement, or restraint, and that there is reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, such court or judge may cause a warrant to be issued, reciting the facts, and directed to the sheriff, coroner, or constable of the county, commanding such officer to take such person thus held in custody, confinement, or restraint, and forthwith bring him before such court or judge, to be dealt with according to law. En. February 14, 1872.

§ 1498. **Warrant may include person charged with illegal detention.** The court or judge may also insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint. En. February 14, 1872.

§ 1499. **Warrant, how executed.** The officer to whom such warrant is delivered must execute it by bringing the person therein named before the court or judge who directed the issuing of such warrant. En. February 14, 1872.

§ 1500. **Return and hearing on.** The person alleged to have such party under illegal confinement or restraint may make return to such warrant as in case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, and trial may thereupon be had as upon a return to a writ of habeas corpus. En. February 14, 1872.

§ 1501. **Party may be discharged or remanded.** If such party is held under illegal restraint or custody, he must be discharged; and if not, he must be restored to the care or custody of the person entitled thereto. En. February 14, 1872.

§ 1502. **Writ and process may issue at any time.** Any writ or process authorized by this chapter may be issued and served on any day or at any time. En. February 14, 1872.

§ 1503. **By whom issued and when returnable.** All writs, warrants, process, and subpoenas authorized by the provi-



sions of this chapter must be issued by the clerk of the court, and, except subpoenas, must be sealed with the seal of such court, and served and returned forthwith, unless the court or judge shall specify a particular time for any such return. En. February 14, 1872.

§ 1504. **Where returnable.** All such writs and process, when made returnable before a judge, must be returned before him at the county seat, and there heard and determined. En. February 14, 1872. Am'd. 1880, 4.

Cal. Rep. Cit. 69, 238.

§ 1505. **Damages for failure to issue or obey the writ.** If any judge, after a proper application is made, refuses to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ may be directed, refuses obedience to the command thereof, he shall forfeit and pay to the person aggrieved a sum not exceeding five thousand dollars, to be recovered by action in any court of competent jurisdiction. En. February 14, 1872.

Cal. Rep. Cit. 79, 31; 79, 32.

## CHAPTER II.

### OF CORONERS' INQUESTS AND DUTIES OF CORONERS.

- § 1510. Coroner to summon jury to inquire into cause of death.
- § 1511. Jurors to be sworn.
- § 1511a. Inquest.
- § 1511b. To view body.
- § 1512. Witnesses.
- § 1513. Witnesses compelled to attend.
- § 1514. Verdict of jury in writing. What to contain.
- § 1514a. Witness to be bound over, when. Recognizances.
- § 1515. Testimony in writing, and where filed.
- § 1516. Exception.
- § 1517. Coroner to issue warrant, when.
- § 1518. Form of warrant.
- § 1519. How served.

§ 1510. **Coroner to summon jury to inquire into cause of death.** When a coroner is informed that a person has been killed, or has committed suicide, or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, he must go to the place where the body is, cause it to be exhumed if it has been interred, and summon not less than nine nor more than fifteen per-



sons, qualified by law to serve as jurors, to appear before him forthwith, at the place where the body of deceased is, to inquire into the cause of the death. No such person is exempt from jury duty except at the discretion of the coroner. No person shall be summoned as juror who is related to the decedent or is charged with or suspected of the killing, nor shall any one be summoned who is known to be prejudiced for or against him, but no person selected or summoned to appear as a juror is subject to be challenged by any party. En. February 14, 1872. Am'd. 1905, 707.

The amendment consists of the last two sentences. The matter thus added to the section is a codification of a part of the provisions of section 3 of the statute of 1871-2, page 403, as amended by the statute of 1875-6, page 379, respecting jurors summoned to act at coroners' inquests.—Code Commissioner's Note.

See the note of the former Code Commissioners to this statute, p. 586 of the Penal Code of 1903.

**Inquest:** See Pol. Code, secs. 4285-4290.

**Powers and duties of coroners:** See Pol. Code, secs. 4285-4292.

**Justice may act as coroner when:** See Pol. Code, sec. 4289.

**Costs of inquest in state prison:** See post, Appendix, title Costs.

**Act providing for payment for chemical and post mortem examinations:** See post, Appendix, title Coroners.

**Act relating to appointment of physician at inquest:** See post, Appendix, title Coroners.

**Act providing for attendance of physicians and surgeons:** See post, Appendix, title Coroners.

**Coroners in San Francisco, act relating to:** See post, Appendix, title Coroners.

**Acts furnishing assistants to coroners in certain cities:** See post, Appendix, title Coroners.

**Act prescribing fees of coroners:** See post, Appendix, title Coroners.

**Act providing shorthand reporter at inquest:** See post, Appendix, title Coroners.

**§ 1511. Jurors to be sworn.** When six or more of the jurors attend, they must be sworn by the coroner to inquire who the person was, and when, where, and by what means, he came to his death, and into the circumstances attending his death; and to render a true verdict thereon,

according to the evidence offered them, or arising from the inspection of the body. En. February 14, 1872.

§ 1511a. **Inquest.** There must be but one inquest upon a body, unless that taken is set aside by the court; and there must be but one inquest held upon several bodies of persons who were killed by the same cause, and who died at the same time. Whenever it appears that an error in the identity of the body has been made by the jury, it is discretionary with the coroner to call another inquest without reference to the court, and a memorandum of the error must be entered upon the erroneous inquisition. En. Stats. 1905, 707.

This section is a codification of section 6 of the statute of 1871-2, page 403, above referred to.—Code Commissioner's Note.

§ 1511b. **To view the body.** After the jury have been sworn and charged by the coroner, they must go together with the coroner to view and examine the body of the deceased person. They must not proceed upon the inquest until they have so viewed the body. After the jury have viewed the body, they may retire to any convenient place to hear the testimony of witnesses and deliberate upon their verdict. For this end the coroner may adjourn the inquest from time to time, as may be necessary. En. Stats. 1905, 708.

Section 7 of the statute last referred to is codified in this section.—Code Commissioner's Note.

§ 1512. **Witnesses.** Coroners may issue subpoenas for witnesses, returnable forthwith, or at such time and place as they may appoint, which may be served by any competent person. They must summon and examine as witnesses every person who in their opinion, or that of any of the jury, has any knowledge of the facts, and may summon a surgeon or physician to inspect the body, or hold a post mortem examination thereon, or a chemist to make an analysis of the stomach or the tissues of the body of the deceased, and give a professional opinion as to the cause of the death. En. February 14, 1872. Am'd. 1905, 708.

The change consists in the insertion of the words "or hold a post mortem examination thereon, or a chemist to make analysis of the tissues of the body of the deceased," after "body." This provision is taken from sections 1 and 2 of the statute of 1871-2, page 403, above referred to.—Code Commissioner's Note.

**§ 1513. Witnesses compelled to attend.** A witness served with a subpoena may be compelled to attend and testify, or be punished by the coroner for disobedience, in like manner as upon a subpoena issued by a justice of the peace. En. February 14, 1872. Am'd. 1905, 708.

The amendment consists of inserting the word "be" before the word "punished."—Code Commissioner's Note.

Cal. Rep. Cit. 59, 651; 122, 638; 122, 640.

**§ 1514. Verdict of jury in writing. What to contain.** After inspecting the body and hearing the testimony, the jury must render their verdict and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where, and by what means he came to his death; and if he was killed, or his death occasioned by the act of another, by criminal means; who is guilty thereof. En. February 14, 1872.

**§ 1514a. Witness to be bound over, when; recognizances.** If the jury find that a murder or manslaughter has been committed, the coroner may bind over the witnesses against the accused to appear and testify before the grand jury, or a magistrate, or the superior court, and to obey all orders of such magistrate or court in the premises. Such recognizance must be in writing and must be subscribed by the parties to be bound thereby, and made payable to the people of the State of California in an amount to be fixed by the coroner, and approved by a judge of the superior court; and in case of their refusal to sign such recognizance, the coroner has power to commit such witness as in the case of examination of an accused person by a magistrate. En. Stats. 1905, 708.

This is a codification of section 15 of the statute of 1871-2, page 403, relating to coroners.—Code Commissioners' Note.

**§ 1515. Testimony in writing and where filed.** The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner or under his direction, and forthwith filed by him, with the inquisition, and all recognizances taken by him, in the office of the county clerk. En. February 14, 1872. Am'd. 1880, 35; 1905, 709.

The change consists in the insertion of the words "and all recognizances taken by him," after the word "inquisition."—Code Commissioner's Note.

Cal. Rep. Cit. 59, 650; 59, 651.

§ 1516. **Exception.** If, however, the person charged with the commission of the offense is arrested before the inquisition can be filed, the coroner must deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who must return the same, with the depositions and statement taken before him, to the office of the clerk of the superior court of the county. En. February 14, 1872. Am'd. 1880, 35.

§ 1517. **Coroner to issue warrant, when.** If the jury find that the person was killed by another, under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another by criminal means, and the party committing the act is ascertained by the inquisition, and is not in custody, the coroner must issue a warrant, signed by him, with his name of office, into one or more counties, as may be necessary for the arrest of the person charged. En. February 14, 1872.

§ 1518. **Form of warrant.** The coroner's warrant must be in substantially the following form:

County of ———.

The people of the state of California, to any sheriff, constable, marshal, or policeman in this state:

An inquisition having been this day found by a coroner's jury before me, stating that A B has come to his death by the act of C D, by criminal means, [or as the case may be, as found by the inquisition] you are therefore commanded forthwith to arrest the above named C D, and take him before the nearest or most accessible magistrate in this county.

Given under my hand this — day of —, A. D. eighteen —.

E F, coroner of the county of —.

En. February 14, 1872.

§ 1519. **How served.** The coroner's warrant may be served in any county, and the officer serving it must proceed thereon, in all respects, as upon a warrant of arrest on an information before a magistrate, except that when served in another county it need not be indorsed by a magistrate of that county. En. February 14, 1872.

**1520 (new).** The district attorney shall have the right to be present at any and all inquests held by the coroner when he has reason to believe a crime has been committed. (In effect March 19, 1907.)



## CHAPTER III.

## OF SEARCH-WARRANTS.

- § 1523. Search-warrant defined.
- § 1524. Upon what ground it may issue.
- § 1525. It cannot be issued but upon probable cause, etc.
- § 1526. Magistrates must examine, on oath, complainant, etc.
- § 1527. Depositions, what to contain.
- § 1528. When to issue warrant.
- § 1529. Form of warrant.
- § 1530. By whom served.
- § 1531. Officer may break open door, etc., to execute warrant.
- § 1532. May break open door, etc., to liberate person acting in his aid.
- § 1533. When warrant may be served in the night.
- § 1534. Within what time warrant must be executed.
- § 1535. Officer to give receipt for property taken.
- § 1536. Property, how disposed of.
- § 1537. Return of warrant and inventory of property taken.
- § 1538. Copy of inventory, to whom delivered.
- § 1539. Proceedings, if grounds of warrant are controverted.
- § 1540. Property, when to be restored.
- § 1541. Depositions, warrants, etc., to be returned to court.
- § 1542. Search of defendant in presence of magistrate.

§ 1523. **Search-warrant defined.** A search-warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate. En. February 14, 1872.

Cal. Rep. Cit. 68, 288; 68, 289.

Crim. Prac. Act, sec. 642. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1524. **Upon what ground it may issue.** It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled; in which case it may be taken on the warrant from any place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or from any person in whose possession it may be.

2. When it was used as the means of committing a felony; in which case it may be taken on the warrant from the place in which it is concealed, or from the possession of the

person by whom it was used in the commission of the offense, or from any person in whose possession it may be.

3. When it is in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or from any place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

4. When the property is a cask, keg, bottle, vessel, siphon, can, case, or other package, bearing printed, branded, stamped, engraved, etched, blown, or otherwise attached or produced thereon the duly filed trademark or name of the person by whom, or in whose behalf, the search-warrant is applied for, in the possession of any person except the owner thereof, with the intent to sell or traffic in the same, or refill the same with intent to defraud the owner thereof, with such intent, and without such owner's consent thereof, or unless the same shall have been purchased from the owner thereof; in which case it may be taken on the warrant from such person, or from any place occupied by him, or under his control, or from the possession of the person to whom he may have delivered it. En. February 14, 1872. Am'd. 1899, 87.

Crim. Prac. Act, sec. 643. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1525. **It cannot be issued but upon probable cause, etc.** A search-warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched. En. February 14, 1872.

Crim. Prac. Act, sec. 644. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1526. **Magistrates must examine, on oath, complainant, etc.** The magistrate must, before issuing the warrant, examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them. En. February 14, 1872.

Cal. Rep. Cit. 75, 372.



Crim. Prac. Act, sec. 645. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1527. **Depositions, what to contain.** The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist. En. February 14, 1872.

Cal. Rep. Cit. 75, 372.

Crim. Prac. Act, sec. 646. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1528. **When to issue warrant.** If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search-warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate. En. February 14, 1872.

Crim. Prac. Act, sec. 647. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1529. **Form of warrant.** The warrant must be in substantially the following form:

County of —.

The people of the state of California to any sheriff, constable, marshal, or policeman in the county of —.

Proof, by affidavit, having been this day made before me by [naming every person whose affidavit has been taken], that [stating the grounds of the application, according to section one thousand five hundred and twenty-five, or if the affidavit be not positive, that there is probable cause for believing that—stating the ground of the application in the same manner], you are therefore commanded, in the daytime, [or at any time of the day or night, as the case may be, according to section one thousand five hundred and thirty-three], to make immediate search on the person of C D [or in the house situated —, describing it or any other place to be searched, with reasonable particularity, as the case may be] for the following property: [describing it with reasonable particularity]; and if you find the same or any part thereof, to bring it forthwith before me at [stating the place].

Given under my hand, and dated this — day —, A. D. eighteen —.

E F, justice of the peace [or as the case may be]. En. February 14, 1872.

Cal. Rep. Cit. 68, 289.

Crim. Prac. Act, sec. 648. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1530. **By whom served.** A search-warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution. En. February 14, 1872.

§ 1531. **Officer may break open door, etc., to execute warrant.** The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance. En. February 14, 1872.

Crim. Prac. Act, sec. 650. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1532. **May break open door, etc., to liberate person acting in his aid.** He may break open any outer or inner door or window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation. En. February 14, 1872.

Crim. Prac. Act, sec. 651. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1533. **When warrant may be served in the night.** The magistrate must insert a direction in the warrant that it be served in the daytime, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night. En. February 14, 1872.

Crim. Prac. Act, sec. 652. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1534. **Within what time warrant must be executed.** A search-warrant must be executed and returned to the magistrate who issued it within ten days after its date;

after the expiration of this time the warrant, unless executed, is void. En. February 14, 1872.

Crim. Prac. Act, sec. 653. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1535. Officer to give receipt for property taken.** When the officer takes property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property. En. February 14, 1872.

Crim. Prac. Act, sec. 654. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1536. Property, how disposed of.** When the property is delivered to the magistrate, he must, if it was stolen or embezzled, or if it was taken on a warrant issued on the grounds stated in the fourth subdivision of section fifteen hundred and twenty-four of this code, dispose of it as provided in sections fourteen hundred and eight and fourteen hundred and thirteen, inclusive. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of section fifteen hundred and twenty-four, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense in respect to which the property taken is triable. En. February 14, 1872. Am'd. 1903, 81.

Cal. Rep. Cit. 68, 289; 75, 372.

Crim. Prac. Act, sec. 655. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1537. Return of warrant and inventory of property taken.** The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains

a true and detailed account of all the property taken by me on the warrant." En. Feb. 14, 1872.

Crim. Prac. Act, sec. 656. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1538. **Copy of inventory, to whom delivered.** The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant. En. February 14, 1872.

Crim. Prac. Act, sec. 657. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1539. **Proceedings, if grounds of warrant are controverted.** If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated in the manner prescribed in section eight hundred and sixty-nine. En. February 14, 1872.

Crim. Prac. Act, sec. 658. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Crim. Prac. Act, sec. 659. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1540. **Property, when to be restored.** If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken. En. February 14, 1872.

Crim. Prac. Act, sec. 660. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1541. **Depositions, warrants, etc., to be returned to court.** The magistrate must annex the depositions, the search warrant and return, and the inventory, and if he has not power to inquire into the offense in respect to which the warrant was issued, he must at once file it and such depositions and return with the clerk of the court having power to so inquire. En. February 14, 1872. Am'd. 1905, 709.

The amendment consists in the omission of the word "together," after "annex"; in the omission of all of the section following "inventory," and in the substitution therefor of a provision to the effect that if the magistrate has not power to inquire into the offense, he must file the warrant and the deposition and return with the clerk of the court having power to so inquire.—Code Commissioner's Note.

Cal. Rep. Cit. 75, 372.

Crim. Prac. Act, sec. 661. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1542. Search of defendant in presence of magistrate.** When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order, or to the order of the court in which the defendant may be tried. En. February 14, 1872.

Cal. Rep. Cit. 68, 288.

Crim. Prac. Act, sec. 664. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## CHAPTER IV.

### PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

- § 1547. Rewards for the apprehension of fugitives from justice.
- § 1548. Fugitives from another state, when to be delivered up.
- § 1549. Magistrate to issue warrant.
- § 1550. Proceedings for the arrest and commitment of the person charged.
- § 1551. When and for what time to be committed.
- § 1552. His admission to bail.
- § 1553. Magistrate must notify district attorney of the arrest.
- § 1554. Duty of the district attorney.
- § 1555. Person arrested, when to be discharged.
- § 1556. Magistrate to return his proceedings to superior court.
- § 1557. Fugitives from this state—accounts.
- § 1558. No fee to be paid to public officer procuring surrender.

**§ 1547. Rewards for the apprehension of fugitives from justice.** The governor may offer a reward not exceeding one thousand dollars (\$1000.) payable out of the general fund, for the apprehension—

1. Of any convict who has escaped from the state's prison;

2. Of any person who has committed, or is charged with the commission of an offense punishable with death;

3. For the arrest of each person engaged in the robbery of, or any attempt to rob any person or persons upon or having in charge in whole or in part any stage coach, wagon, railroad train or other conveyance engaged at the time in carrying passengers or any private conveyance within this state.

The reward to be paid to the person or persons making the arrest, immediately upon the conviction of the person or persons so arrested. An act entitled an act imposing certain duties upon the governor of the state, approved April 3, 1876, is hereby repealed. En. February 14, 1872. Am'd. 1905, 223.

Cal. Rep. Cit. 120, 265.

Act relating to offer of rewards: See post, Appendix, title Governor.

§ 1548. **Fugitives from another state, when to be delivered up.** A person charged in any state of the United States with treason, felony, or other crime, who flees from justice and is found in this state, must, on demand of the executive authority of the state from which he fled, be delivered up by the governor of this state, to be removed to the state having jurisdiction of the crime. En. February 14, 1872.

Cal. Rep. Cit. 49, 434.

Crim. Prac. Act, sec. 665. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Delivered, to whom.—Section 5278 of the Revised Statutes of the United States provides that after the demand, above referred to, has been made upon the executive of a state, it shall be his duty “to cause him,” the fugitive, “to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear.”

Evidence of the charge.—The evidence required that a person whose delivery is demanded has been charged with the commission of a crime, is “a copy of an indictment

found or an affidavit made before a magistrate of any state or territory, charging the person with having committed'' the particular crime therein set forth. This copy must be ''certified as authentic by the governor, or other chief magistrate, of the state or territory from whence the person so charged has fled'': U. S. Rev. Stats., sec. 5278.

**§ 1549. Magistrate to issue warrant.** A magistrate may issue a warrant for the apprehension of a person so charged, who flees from justice and is found in this state. En. February 14, 1872.

Cal. Rep. Cit. 49, 434.

Crim. Prac. Act, sec. 666. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1550. Proceedings for the arrest and commitment of the person charged.** The proceedings for the arrest and commitment of a person charged are, in all respects, similar to those provided in this code for the arrest and commitment of a person charged with a public offense committed in this state, except that an exemplified copy of an indictment found, or other judicial proceedings had against him, in the state in which he is charged to have committed the offense, may be received as evidence before the magistrate. En. February 14, 1872.

Cal. Rep. Cit. 49, 437.

Crim. Prac. Act, sec. 667. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

**§ 1551. When and for what time to be committed.** If, from the examination, it appear that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this state, on the requisition of the executive authority of the state in which he committed the offense, unless he gives bail as provided in the next section, or until he is legally discharged. En. February 14, 1872.

Crim. Prac. Act, sec. 668. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.



§ 1552. **His admission to bail.** The magistrate may admit the person arrested to bail by an undertaking with sufficient securities, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the governor of this state. En. February 14, 1872.

Crim. Prac. Act, sec. 669. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1553. **Magistrate must notify district attorney of the arrest.** Immediately upon the arrest of the person charged, the magistrate must give notice thereof to the district attorney of the county. En. February 14, 1872.

Crim. Prac. Act, sec. 670. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1554. **Duty of the district attorney.** The district attorney must immediately thereafter give notice to the executive authority of the state, or to the prosecuting attorney or presiding judge of the court of the city or county within the state having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged. En. February 14, 1872.

Crim. Prac. Act, sec. 671. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1555. **Person arrested, when to be discharged.** The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the governor of this state. En. February 14, 1872.

Crim. Prac. Act, sec. 672. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1556. **Magistrate to return his proceedings to superior court.** The magistrate must return his proceedings to the superior court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he is in custody, or the time of his arrest has not elapsed, it may discharge him from detention, or may order his undertaking of bail to be canceled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a



time specified in the undertaking. En. February 14, 1872. Am'd. 1880, 35.

Crim. Prac. Act, sec. 673. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

§ 1557. **Fugitives from this state—accounts.** When the governor of this state, in the exercise of the authority conferred by section two, article IV, of the constitution of the United States, or by the laws of this state, demands from the executive authority of any state of the United States, or of any foreign government, the surrender to the authorities of this state of a fugitive from justice, who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners, and paid out of the state treasury. En. February 14, 1872.

Crim. Prac. Act, sec. 674. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212. Am'd. 1854, 80.

§ 1558. **No fee to be paid to public officer procuring surrender.** No compensation, fee, or reward of any kind can be paid to or received by a public officer of this state, or other person, for a service rendered in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this state, or detaining him therein, except as provided for in such section. En. February 14, 1872.

## CHAPTER V.

### MISCELLANEOUS PROVISIONS RESPECTING SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

§ 1562. Parties to special proceedings, how designated.

§ 1563. Entitling affidavits.

§ 1564. Subpoenas.

§ 1562. **Parties to special proceedings, how designated.** The party prosecuting a special proceeding of a criminal nature is designated in this code as the complainant, and the adverse party as the defendant. En. February 14, 1872.

§ 1563. **Entitling affidavits.** The provisions of section one thousand four hundred and one, in respect to entitling

affidavits, are applicable to such proceedings. En. February 14, 1872.

§ 1564. **Subpoenas.** The courts and magistrates before whom such proceedings are prosecuted, may issue subpoenas for witnesses, and punish their disobedience in the same manner as in a criminal action. En. February 14, 1872.

## TITLE XIII.

### PROCEEDINGS FOR BRINGING PERSONS IMPRISONED IN THE STATE PRISON, OR THE JAIL OF ANOTHER COUNTY, BEFORE A COURT.

§ 1567. Persons imprisoned in another county, how brought before a court.

§ 1567. **Persons imprisoned in another county, how brought before a court.** When it is necessary to have a person imprisoned in the state prison brought before any court, or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court, and executed by the sheriff of the county where it is made. En. February 14, 1872.

Cal. Rep. Cit. 82, 458; 82, 461; 82, 467; 82, 468; 92, 486; 92, 491; 135, 342.

Crim. Prac. Act, sec. 683. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

## TITLE XIV.

### DISPOSITION OF FINES AND FORFEITURES.

§ 1570. Fines and forfeitures, how disposed of.

§ 1570. **Fines and forfeitures, how disposed of.** All fines and forfeitures collected in any court, except police courts and city justices' courts, must be paid to the county treasurer of the county in which the court is held; provided, that all forfeitures and fines collected in any court, for the violation of any city or town ordinance shall be paid to the city or town treasurer of the city or town in which such ordinance is in force; and further provided, that all fines and

forfeitures collected in any police court or city justice's court that is maintained, and the salaries of the officers thereof, paid by the city, shall be paid to the city treasurer of the city in which such court is located, subject, however, to the provisions of Chapter I of Title XV of Part I of this code. En. February 14, 1872. Am'd. 1873-4, 454; 1901, 88; 1905, 176.

Disposition of fines. See ante, § 1457.

Cal. Rep. Cit. 65, 478; 88, 411; 88, 412.

Crim. Prac. Act, sec. 679. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 45, 246.



## PART III.

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THE STATE PRISON AND COUNTY JAILS.

(§§ 1573-1615.)

(533)



TITLE I (New).  
OF STATE PRISONS.

- Section 1572. Names of state prisons.  
1573. Directors, how appointed.  
1574. Organization of board of directors.  
1575. Quorum.  
1576. Directors, Duties of.  
1577. Wardens, appointment of.  
1578. Wardens, duties of.  
1579. Prisoners, release and restoration of, to citizenship.  
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1581. Removal of wardens, clerks, etc.  
1582. Wardens and clerks, salaries of.  
1583. Contracts.  
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1585. Moneys collected by wardens, receipts to be given for.  
1586. Convicts, employment of.  
1587. Prisoners, treatment of.  
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1591. Officers and employes, not to receive other compensation than that allowed by directors.  
1592. Officers and employes, not to make gifts, etc.  
1593. Annual reports.  
1594. Bonds of officers and employes.  
1595. Rebuilding of buildings destroyed by fire.  
1596. Reports.

**1572.** The state prisons of this state shall be known as the State Prison at San Quentin, which shall have an official staff conforming to the laws of the state in relation to state prisons; and the State Prison at Folsom, which shall have a similar staff and be similarly organized, and all the finances and accounts of the two prisons shall be kept separate and apart from each other.

**1573.** For the government and management of the State prisons there shall be appointed by the governor, by and

under the advice of the senate, five directors, who shall hold their office for the term of ten years, from and after the date of such appointment; such appointments to be made as vacancies occur in the board. In case of death or resignation of a director his successor shall be appointed to fill the unexpired term of such director by the governor, by and with the advice of the senate. Each director shall subscribe an oath of office, which shall be indorsed on his commission, within ten days after receiving written notice of such appointment, and a duplicate of such oath shall also be filed with the secretary of state.

**1574.** The board of directors shall annually elect one of their members president of the board, whose duty it shall be to preside at the meeting of the board and to perform such other duties as may from time to time be prescribed by the rules and regulations for the government of the board.

**1575.** Three members of the board shall constitute a quorum for the transaction of all business, but no order of the board shall be valid unless concurred in by three or more members.

**1576.** It shall be the duty of the directors to determine the necessary officers and employes of the prisons other than those of the wardens and clerks, specifying their duties severally, and fixing their salaries; to prescribe rules and regulations for the government of the prisons, and to revise and change the same from time to time as circumstances may require, and to board and lodge the officers and employes, or allow them a money commutation in lieu thereof; **provided**, the warden may make temporary rules, in cases of emergency, to remain in force until the succeeding meeting of the board. At least three of the directors shall visit the prisons once in each month, and oftener if necessary, at such time as they may select. The directors shall audit all claims for supplies, services, and expenses of officers and employes, and all other demands against the prison.

**Second**—To enter or cause to be entered on their journal by the clerks all official acts which shall be signed by at least three members of the board.

**Third**—On or before the first day of December of each year to report to the governor the condition of the prisons, together with detailed statements of receipts and expenditures, and such suggestions concerning the prisoners as may appear to be necessary and expedient.

**Fourth**—The board of directors shall also adopt rules and



regulations not inconsistent with the Constitution and the laws of the State of California for the government of the board, and may change the same at their pleasure.

**Fifth**—The board of directors shall have power to establish an office in San Francisco, and employ a secretary.

**1577.** The board of directors shall appoint a warden for each prison, who shall take and subscribe an oath or affirmation faithfully to discharge the duties of his office, as prescribed by law and by the rules and regulations of the board of directors, and to enter into a bond to the State of California, in the sum of twenty-five thousand dollars, with two or more sufficient sureties, to be approved by the directors and the attorney-general of the state, conditioned to the faithful performance of such duties as such officer aforesaid, and he shall hold his office four years after such appointment.

**1578.** The wardens shall reside at the state prisons to which they are respectfully assigned in houses provided and furnished at the expense of the state, as may be ordered by the board of directors, and it shall be their duty:

**First**—To fill all subordinate positions that may be created by order of the board of directors by appointment of suitable persons thereto.

**Second**—Under the order and direction of the board to prosecute all suits at law or in equity that may be necessary to protect the rights of the state in matters or property connected with the prisons and their management, such suits to be prosecuted in the name of the board of state prison directors.

**Third**—To supervise the government, discipline, and police of the prisons, and to enforce all orders and regulations of the board in respect to such prisons. A registry of convicts shall be kept by them respectively, in which shall be entered the name of each convict, the crime of which he is convicted, the period of his sentence, from what county sentenced, by what court sentenced, his nativity, to what degree educated, at what institution and under what system, an accurate description of his person, and whether he has been previously confined in a state prison in this or any other state, and if so, when and how he was discharged.

**Fourth**—To report to the governor before the twentieth of each month the names of all prisoners whose terms are about to expire, giving in such report the terms of their sentences, the date of imprisonment, the amount of total credits

to the date of such report, and the date when their service would expire by limitation of sentence.

**Fifth**—To perform such other duties as may be prescribed by the board of directors.

**1579.** The governor, at the expiration of the term for which any prisoner has been sentenced, less the number of days allowed and credited to him, must order the release of such prisoner, by an order under his hand, addressed to the warden of the prison in which he has been confined, in such mode and form as he may deem proper, and with or without restoration to citizenship, according to his discretion, and if he order the release of such prisoner without restoration to citizenship, he may at any time thereafter, in his discretion, make a further order restoring to citizenship the prisoner so released.

**1580.** The board of directors shall appoint a clerk for each prison, who shall take an oath of office and enter into a bond to the state, with sureties satisfactory to the board, in the sum of ten thousand dollars, conditioned that they will faithfully discharge the duties required of them. The clerks shall hold their office for the period of four years after such appointments. The clerks shall keep the accounts of the prisons to which they are severally appointed, in such manner as to exhibit clearly all its financial transactions; and the clerks shall perform such other duties as may from time to time be required of them by the board of directors.

**1581.** No person shall be appointed to any office by the wardens or be employed in the prisons on behalf of the state who is a contractor or agent, or who is interested directly or indirectly in any business carried on therein; and no male person who is not a qualified elector of the State of California shall be appointed by the wardens to any office in or about the prisons, nor shall any be appointed or employed by virtue of this title, who is in the habit of intemperate use of liquors, and a single act of intemperance shall justify his discharge or removal, and it shall be the duty of such warden to discharge such person. Wardens and clerks may be removed by the board of directors at any time for misconduct, incompetency, or neglect of duty; and all other officers and employes may be removed at any time at the pleasure of the wardens.

**1582.** The wardens shall receive a salary of not less than twenty-four hundred dollars, and not to exceed three thousand dollars, per annum, in the discretion of the board of

directors. The clerks shall receive a salary not to exceed eighteen hundred dollars per annum, and all other officers and employes shall receive such compensation as the directors may deem just and equitable in each case.

**1583.** The board of directors are hereby authorized and required to contract for provisions, clothing, medicines, forage, fuel, and all other staple supplies needed for the support of the prisons for any period of time, not exceeding one year, and such contracts shall be limited to bona fide dealers in the several classes of articles contracted for. Contracts for such articles as the board may desire to contract for, shall be given to the lowest bidder at a public letting thereof, if the price bid is a fair and reasonable one, and not greater than the usual market value and prices. Each bid shall be accompanied by such security as the board may require, conditional upon the bidder entering into a contract upon the terms of his bid, on notice of the acceptance thereof, and furnishing a penal bond with good and sufficient sureties in such sum as the board may require, and to their satisfaction that he will faithfully perform his contract. If the proper officer of the prison reject any article, as not complying with the contract, or if a bidder fail to furnish the articles awarded to him when required, the proper officer of the prison may buy other articles of the kind rejected or called for, in the open market, and deduct the price thereof, over the contract price, from the amount due to the bidder, or charge the same up against him. Notice of the time, place, and conditions of the letting of contracts shall be given for at least two consecutive weeks in two newspapers printed and published in the city and county of San Francisco, and in one newspaper printed and published in the city of Sacramento, and in the county where the prison to be supplied is situated. If all the bids made at such letting are deemed unreasonably high, the board may, in their discretion, decline to contract and may again advertise for such time and in such papers as they see proper for proposals, and may so continue to renew the advertisement until satisfactory contracts are made; and in the meantime the board may contract with any one whose offer is regarded as just and equitable, or may purchase in the open market. No bid shall be accepted, nor a contract entered into in pursuance thereof, when such bid is higher than any other bid at the same letting for the same class or schedule of articles, quality considered, and when a contract can be had at such lower

bid. When two or more bids for the same article or articles are equal in amount, the board may select the one which, all things considered, may by them be thought best for the interest of the state, or they may divide the contract between the bidders, as in their judgment may seem proper and right. The board shall have power to let a contract in the aggregate or they may segregate the items, and enter into a contract with the bidder or bidders who may bid lowest on the several articles. The board shall have the power to reject the bid of any person who had a prior contract, and who had not, in the opinion of the board, faithfully complied therewith.

**1584.** All moneys received or collected by the warden of San Quentin prison shall be reported to the state controller on the first day of each and every month in such form as the controller may require, and at the same time shall be paid into the general fund of the state treasury on the order of the controller, except so much thereof as shall be necessary to be paid into the jute revolving fund as required by the provisions of an act of the legislature approved March 9th, 1885, and amended March 16th, 1889, and of any other act amendatory thereof or supplementary thereto. All moneys received or collected by the warden of Folsom prison shall be reported to the state controller on the first day of each and every month in such form as the controller may require and at the same time shall be paid into the state treasury to the credit of the Folsom state prison fund, excepting so much thereof as may be necessary to pay the expenses and money allowed discharged prisoners under the provisions of this title. The wardens shall require vouchers for all moneys by them expended and safely keep the same on file in their respective offices at the prisons. For all sums of money required to be paid other than for the uses above named, as well as for said uses when there is not sufficient money in the hands of the warden, drafts shall be drawn on the controller of state, signed by at least three of the directors, and the controller of state shall draw his warrant on the state treasurer who shall pay the same out of any moneys belonging to the state prison fund or appropriated for the use or support of the state prisons. The amount of all money retained by the wardens and the aggregate amount paid out shall be reported quarterly to the controller of state and the proper entries shall be made on the controller's books.

**1585.** All revenues of the prisons, unless in this title otherwise provided, shall be paid to the wardens, who alone

are authorized to receipt for the same and discharge from liability. When any sum of money is paid to the wardens, who alone are authorized to receipt for the same and discharge from liability. They shall cause the same to be properly entered on the books by the clerks. On payment of any moneys into the state treasury, as provided in this title, the wardens and state treasurer shall report to the controller of state the amount so paid, and the state treasurer shall give the wardens a receipt therefor, which receipt shall be filed with the controller. The wardens shall report to the controller of state the amount of money paid into said treasury by them during each month, and shall also report to said controller of state the amounts received and disbursed by them every three months, and during the period for which such report shall be made, which quarterly report shall be signed by the warden and at least three of the directors.

**1586.** All convicts may be employed by authority of the board of directors, under charge of the wardens respectively and such skilled foremen as he may deem necessary in the performance of work for the state, or in the manufacture of any article or articles for the state, or the manufacture of which is sanctioned by law. At San Quentin no articles shall be manufactured for sale except jute fabrics. At Folsom after the completion of the dam and canal the board may commence the erection of structures for jute manufacturing purposes. The board of directors are hereby authorized to purchase from time to time such tools, machinery, and materials, and to direct the employment of such skilled foremen as may be necessary to carry out the provisions of this section, and to dispose of the articles manufactured, and not needed by the state, for cash, at private sale, in such manner as provided by law.

**1587.** In the treatment of the prisoners the following general rules shall be observed:

**First**—Each convict shall be provided with a bed of straw or other suitable material, and sufficient covering of blankets, and shall be supplied with garments of coarse, substantial material, of distinctive manufacture, and with sufficient plain and wholesome food of such variety as may be most conducive to good health.

**Second**—No punishment shall be inflicted except by the order and under the direction of the wardens.

**Third**—The warden shall keep a correct account of all money and valuables upon the prisoner when delivered at

the prison, and shall pay the amount, or the proceeds thereof, or return the same to the convict when discharged, or to his legal representative in case of his death; and in the case of the death of such convict without being released, if no legal representative shall demand such property within five years, the same shall be paid into the state prison fund.

**Fourth**—The rules and regulations prescribing the duties and obligations of the prisoners shall be printed and hung up in each cell and shop.

**Fifth**—Each convict, when he leaves the prison, shall be supplied with the money taken from him when he entered, and which he has not disposed of, together with any sum which may have been earned by him for his own account, allowed to him by the state for good conduct or diligent labor, or may have been presented to him from any source; and, in case the prisoner has not funds sufficient for present purposes, he shall be furnished with five dollars in money, a suit of clothes, costing not more than ten dollars, and by the cheapest route to the place where sentenced from, if the prisoner desires to return there, or to any other place of the same cost; and he shall be entitled, if he so elect, to immunity from having his hair cut, or from being shaved, for three calendar months immediately prior to his discharge. It shall not be lawful for the officers of the prison to furnish, or permit to be furnished, to any one, for publication, the name of any prisoner about to be discharged. When the warden, and such other officers as may be designated by the directors to act with him in such cases, shall be of opinion that any convict is insane, they shall make proper examination, and if they remain of the opinion that such person is insane, the warden shall certify the fact to the superintendent of one of the state asylums for the insane, and shall forthwith send such convict to said asylum for care and treatment. If at the expiration of the term of sentence the insane convict is still in the insane asylum, he shall be allowed to remain there until discharged cured. It shall be the duty of the warden, also, to send to the directors a copy of such certificate, and thereafter a statement as to his subsequent acts regarding the said insane convict. And it shall be the duty of the superintendent of the insane asylum to receive such insane convict and keep him until cured. It shall be his duty, upon receipt of such insane convict, to notify the directors of the fact, giving name, date, and where from, and from whose hands received. When, in the opinion of the

superintendent, such insane convict is cured of insanity, it shall be his duty to immediately notify the directors thereof; and it shall be his duty also to notify the warden of the prison from whence he was received, who shall immediately send for, take, and receive the said convict back into the prison, the time passed at the asylum counting as part of such convict's sentence. Before discharging any convict who may be insane at the time of the expiration of his sentence, the warden shall first give notice, in writing, to a judge of the superior court of the county in which the state prison may be located, over which he has control, of the fact of such insanity; whereupon said court shall forthwith make an order, and deliver the same to the sheriff of said county, commanding him to remove such insane convict and take him before said court. Upon the receipt of such order, it shall be the duty of said sheriff, to whom it is directed, to execute, and return the same forthwith to the court by whom it was issued, and thereupon the said court shall cause proper examination to be made by medical experts, and if it shall satisfactorily appear that such convict is insane, said court shall order him to be confined in one of the insane asylums. The sheriff shall receive the same compensation as for transferring a prisoner to the state prison, and to be paid in the same manner. If any judge, after having been notified by the warden, shall neglect to cause such order to be made, as herein provided, or any such sheriff shall neglect to remove such insane convict, as required by the provisions of this section, it shall be the duty of the warden to cause such insane convict to be removed before a superior court of a county in which the state prison is located, in charge of an officer of the prison, or other suitable person, for the purpose of examination; and the cost of such removal shall be paid out of the state treasury, in the same manner as when removed by the sheriff, as in this title provided.

**1588.** The state board of prison directors shall require of every able-bodied convict confined in a state prison as many hours of faithful labor in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the prison. Every convict who shall have no infraction of the rules and regulations of the prison, or laws of the state, recorded against him, and who performs in a faithful, orderly, and peaceable manner the duties assigned to him, shall be allowed from his term, instead and lieu of the credits heretofore allowed by law, a deduction of two months.



in each of the first two years, four months in each of the next two years, and five months in each of the remaining years of said term, and pro rata for any part of a year, where the sentence is for or more or less than a year. The mode of reckoning credits shall be as shown in the following table:

No. of Years of Sentence.	Good Time Granted.	Total Good Time Made.	Time to be Served if Full Time is Made.
First year...	2 months.	2 months.....	10 months
Second year..	2 months.	4 months.....	1 year and 8 months
Third year...	4 months.	8 months.....	2 years and 4 months
Fourth year..	4 months.	1 year.....	3 years
Fifth year...	5 months.	1 year and 5 months..	3 years and 7 months
Sixth year...	5 months.	1 year and 10 months..	4 years and 2 months
Seventh year.	5 months.	2 years and 3 months..	4 years and 9 months
Eighth year..	5 months.	2 years and 8 months..	5 years and 4 months
Ninth year...	5 months.	3 years and 1 month...	5 years and 11 months
Tenth year...	5 months.	3 years and 6 months..	6 years and 5 months

and so on, through as many years as may be the term of the sentence. Each convict shall be held entitled to these deductions, unless the board of directors shall find that for misconduct or other cause he should not receive them. But if any convict shall commit any assault upon his keeper, or any foreman, officer, convict, or person, or otherwise endanger life, or shall be guilty of any flagrant disregard of the rules of the prison, or commit any misdemeanor, or in any manner violate any of the rules and regulations of the prison, he shall forfeit all deductions of time earned by him for good conduct before the commission of such offense, or that, under this section, he may earn in the future, or shall forfeit such part of such deductions as to the board of directors may seem just; such forfeiture, however, shall be made only by the board of directors after due proof of the offense and notice to the offender; nor shall any forfeiture be imposed when a party has violated any rule or rules without violence or evil intent, of which the directors shall be the sole judges. The board shall have power to restore credits forfeited, for such reasons as by them may seem proper.

**1589.** All criminals sentenced to the state prisons by the authority of the United States shall be received and kept according to the sentence of the court by which they were tried, and the prisoners so confined shall be subject in all respects and discipline and treatment as though committed under the laws of this state. The wardens are hereby authorized to charge and receive from the United States, for the use of the state, an amount sufficient for the support of each



prisoner, the cost of all clothing that may be furnished, and one dollar per month for the use of the prisoner. No other or further charge shall be made by any officer for or on account of such prisoners.

**1590.** The board of directors shall have power to contract for the supply of gas and water for said prisons, upon such terms as said board shall deem to be for the best interests of the state, or to manufacture gas, or furnish water themselves, at their option. They shall also have power to erect and construct, or cause to be erected and constructed, electrical apparatus or other illuminating works in their discretion with or without contracting therefor, on such terms as they may deem just. The board shall have full power to erect any building or structure deemed necessary by them, or to alter or improve the same, and to pay for the same from the fund appropriated for the use or support of the prisons, or from the earnings thereof, without advertising or contracting therefor; **provided**, that no building or structure, the cost of which will exceed five thousand dollars, shall be erected or constructed without first obtaining the consent of the governor, secretary, and treasurer of the state, or a majority thereof. The board shall have power to give for meritorious service to any convict discharged, or about to be discharged, a sum in addition to that already allowed, not exceeding ten dollars.

**1591.** No officer or employe shall receive, directly or indirectly, any compensation for his services other than that prescribed by the directors; nor shall he receive any compensation whatever, directly or indirectly, for any act or service which he may do or perform for or on behalf of any contractor, or agent, or employe of a contractor. For any violation of the provisions of this section the officer, agent, or employe of the state shall be discharged from his office or service; and every contractor, or employe, or agent of a contractor engaged therein, shall be expelled from the prison grounds, and not again permitted within the same as a contractor, agent, or employe.

**1592.** No officer or employe of the state, or contractor, or employe of a contractor, shall, without permission of the board of directors, make any gift or present to a convict, or receive any from a convict, or have any barter or dealings with a prisoner. For every violation of the provisions of this section, the party engaged therein shall incur the same penalty as prescribed in section one thousand five hundred

and ninety-one of this code. No officer or employe of the prison shall be interested, directly or indirectly, in any contract or purchase made or authorized to be made by any one for or on behalf of the prisons.

**1593.** There shall be printed annually for the use of the prisons five hundred copies of the annual report of the board of directors, and the clerk shall annually transmit to each of the state prisons in the United States one copy of such report.

**1594.** All the bonds of officers and employes under this title shall be deposited with the secretary of state.

**1595.** If any of the shops or buildings in which convicts are employed are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately, under the direction of the board of directors, by and with the advice and consent of the governor, attorney-general, and secretary of state, and the expenses thereof paid out of any funds in the state treasury not otherwise appropriated by law.

**1596.** The board of directors must report to the governor from time to time the names of any and all persons confined in the state prisons who, in their judgment, ought to be pardoned out and set at liberty on account of good conduct, or unusual term of sentence, or any other cause, which, in their opinion, should entitle the prisoner to pardon.

Sec. 2. Nothing in this act contained shall be construed to shorten or extend the term of office of any person holding office or employment at the time this act goes into effect under the provisions of an act entitled, "An act to regulate and govern the state prisons of California," approved March 19, 1889, or the acts amendatory thereof or supplementary thereto. (This title in effect 60 days from and after March 18, 1907.)

## TITLE I.

### OF THE STATE PRISON AND THE DISCHARGE OF PRISONERS THEREFROM BEFORE THEIR TERM OF SERVICE EXPIRES.

Chapter I. Of the State Prison, §§ 1573-1588.

II. Of the Discharge of Prisoners Before the Expiration of their Term of Service, §§ 1590-1595.

## CHAPTER I.

### OF THE STATE PRISON.

- § 1573. Under the charge and control of a board of directors. (Repealed.)
- § 1574. President pro tem. of senate, when to act as director. (Repealed.)
- § 1575. Compensation of directors. (Repealed.)
- § 1576. Board must adopt rules and regulations. (Repealed.)
- § 1577. Board may appoint warden and other officers. (Repealed.)
- § 1578. Duties of clerk and other officers. (Repealed.)
- § 1579. Monthly reports of officers. (Repealed.)
- § 1580. Board must keep accounts and report to the governor. (Repealed.)
- § 1581. Persons convicted of offenses against the United States. (Repealed.)
- § 1582. Disposition of insane prisoners. (Repealed.)
- § 1583. State prison fund. (Repealed.)
- § 1584. State prison fund, how disbursed. (Repealed.)
- § 1585. Board cannot contract debts. (Repealed.)
- § 1586. Compensation for transportation of convicts. (Repealed.)
- § 1587. Contract to be given at public letting. (Repealed.)
- § 1588. Prohibiting employment of convict labor on cut-stone work. (Repealed.)

§ 1573. Under the charge and control of a board of directors. En. February 14, 1872. Rep. 1905, 645.

1573 to 1588; 1590 to 1595 The above-named sections, which comprise Title I of Part III of the Penal Code, with the exception of the last sentence of section 1593, have been completely superseded by the Constitution of 1879 and the general statutes in pursuance thereof. The portion of section 1593 which is still in force has been incorporated into a bill to amend the statute of 1889, page 404, concerning the state prisons, so that it will be preserved, notwithstanding the repeal of these superseded and therefore useless provisions.—Code Commissioner's Note.

Cal. Rep. Cit. 103, 225.

State prisons, acts relating to: See post, Appendix, title State Prisons.

School of industry at Ione, acts relating to: See post, Appendix, title School of Industry.

School of reform at Whittier, acts relating to: See post, Appendix, title School of Reform.

§ 1574. President pro tem. of senate, when to act as director. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1575. Compensation of directors. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1576. Board must adopt rules and regulations. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1577. Board may appoint warden and other officers. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1578. Duties of clerk and other officers. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1579. Monthly reports of officers. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1580. Board must keep accounts and reports to the governor. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1581. Persons convicted of offenses against the United States. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1582. Disposition of insane prisoners. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1583. State prison fund. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1584. State prison fund, how disbursed. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1585. Board cannot contract debts. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1586. Compensation for transportation of convicts. En. February 14, 1872. Am'd. 1880, 31. Rep. 1905, 645.

See note to § 1573, ante.

Cal. Rep. Cit. 50, 119; 77, 595.

Compensation of sheriffs conveying prisoners or insane: See post, Appendix, title Sheriffs.

§ 1587. Contract to be given at public letting. En. Stats. 1873-4, 467. Rep. 1905, 645.

§ 1588. Prohibiting employment of convict labor on cut-stone work. En. Stats. 1901, 272. Rep. 1905, 645.

See note to § 1573, ante.

## CHAPTER II.

### OF THE DISCHARGE OF PRISONERS BEFORE THE EXPIRATION OF THEIR TERM OF SERVICE.

- § 1590. Credits for good behavior, how and when allowed. (Repealed.)
- § 1591. Credits, when forfeited. (Repealed.)
- § 1592. Board to make rules and regulations. (Repealed.)
- § 1593. Board, when to report credits to governor. (Repealed.)
- § 1594. Further powers of the board. (Repealed.)
- § 1595. Recommendations for pardon reported to legislature. (Repealed.)

§ 1590. Credits for good behavior, how and when allowed. En. February 14, 1872. Am'd. 1877-8, 124. Rep. 1905, 645.

See note to § 1573, ante.

Cal. Rep. Cit. 76, 516; 145, 187; 145, 188.

§ 1591. Credits, when forfeited. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1592. Board to make rules and regulations. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1593. Board, when to report credits to governor. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1594. Further powers of the board. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

§ 1595. Recommendations for pardon reported to legislature. En. February 14, 1872. Rep. 1905, 645.

See note to § 1573, ante.

Acts relating to state prisons: See post, Appendix, title State Prisons.

School of industry, acts relating to: See post, Appendix, title School of Industry.

School of reform, acts relating to: See post, Appendix, title School of Reform.

## TITLE II.

### OF COUNTY JAILS.

- § 1597. County jails, by whom kept and for what used.
- § 1598. Rooms required in county jail.
- § 1599. Prisoners to be classified.
- § 1600. Prisoners committed must be actually confined.
- § 1601. Sheriff to receive prisoners committed by courts.
- § 1602. Sheriff answerable for safe-keeping of such prisoners.
- § 1603. When jail of a contiguous county may be used.
- § 1604. Keeper of jail in contiguous county to receive prisoners.
- § 1605. When jail in contiguous county is not to be used.
- § 1606. Prisoners to be returned to proper county.
- § 1607. Prisoners may be removed in case of fire.
- § 1608. Prisoners may be removed in case of pestilence.
- § 1609. Papers served on jailer for prisoner.
- § 1610. Guard for jail.
- § 1611. Sheriff to receive all persons duly committed.
- § 1612. Prisoners on civil process, when not to be received.
- § 1613. Prisoners may be required to labor.
- § 1614. Rules and regulations for the performance of labor.
- § 1615. Hair-cutting for sanitary purposes.

§ 1597. County jails, by whom kept and for what used. The common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated, and are used as follows:

1. For the detention of persons committed in order to secure their attendance as witnesses in criminal cases;
2. For the detention of persons charged with crime and committed for trial;
3. For the confinement of persons committed for contempt, or upon civil process, or by other authority of law;
4. For the confinement of persons sentenced to imprison-

ment therein upon a conviction for crime. En. February 14, 1872.

Cal. Rep. Cit. 78. 306.

Acts relating to house of correction: See post, Appendix, title House of Correction.

School of Industry at Ione, acts relating to: See post, Appendix, title School of Industry.

School of reform at Whittier, acts relating to: See post, Appendix, title School of Reform.

**§ 1598. Rooms required in county jails.** Each county jail must contain a sufficient number of rooms to allow all persons belonging to either one of the following classes to be confined separately and distinctly from persons belonging to either of the other classes:

1. Persons committed on criminal process and detained for trial;

2. Persons already convicted of crime and held under sentence;

3. Persons detained as witnesses or held under civil process, or under an order imposing punishment for a contempt;

4. Males separately from females. En. February 14, 1872.  
Males and females to be separated: See next section.

**§ 1599. Prisoners to be classified.** Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, must not be kept or put in the same room, nor shall male and female prisoners (except husband and wife) be kept or put in the same room. En. February 14, 1872.

**§ 1600. Prisoners committed must be actually confined.** A prisoner committed to the county jail for trial or for examination, or upon conviction for a public offense, must be actually confined in the jail until he is legally discharged; and



§ 1601. **Sheriff to receive prisoners committed by courts.** The sheriff must receive, and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States, until he is discharged according to law, as if he had been committed under process issued under the authority of this state; provision being made by the United States for the support of such prisoner. En. February 14, 1872.

Cal. Rep. Cit. 92, 442.

§ 1602. **Sheriff answerable for safe-keeping of such prisoners.** A sheriff, to whose custody a prisoner is committed, as provided in the last section, is answerable for his safe-keeping in the courts of the United States, according to the laws thereof. En. February 14, 1872.

§ 1603. **When jail in contiguous county may be used.** When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the judge of the superior court may, by a written order filed with the county clerk, designate the jail of a contiguous county for the confinement of the prisoners of his county, or of any of them, and may at any time modify or vacate such order. En. February 14, 1872. Am'd. 1905, 709.

The change consists in the substitution of the words "judge of the superior court" in place of "county judge," and in the substitution of the word "order" for "appointment."—Code Commissioner's Note.

§ 1604. **Keeper of jail in contiguous county to receive prisoners.** A copy of the appointment, certified by the county clerk, must be served on the sheriff or keeper of the jail designated, who must receive into his jail all prisoners authorized to be confined therein, pursuant to the last section, and who is responsible for the safe-keeping of the persons so committed in the same manner and to the same extent as if he was sheriff of the county for whose use his jail is designated, and with respect to the persons so committed he is deemed the sheriff of the county from which they were removed. En. February 14, 1872.

if he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape. En. February 14, 1872.

Cal. Rep. Cit. 97, 242.

**§ 1605. When jail in contiguous county is not to be used.** When a jail is erected in a county for the use of which the designation was made, or its jail is rendered fit and safe for the confinement of prisoners, the judge of the superior court of that county must, by written revocation, file with the county clerk thereof, declare that the necessity for the designation has ceased, and that it is revoked. En. February 14, 1872. Am'd. 1905, 710.

The change consists in the substitution of the words "judge of the superior court" for "county judge."—Code Commissioner's Note.

**§ 1606. Prisoners to be returned to proper county.** The county clerk must immediately serve a copy of the revocation upon the sheriff of the county, who must thereupon remove the prisoners to the jail of the county from which the removal was had. En. February 14, 1872.

**§ 1607. Prisoners may be removed in case of fire.** When a county jail or a building contiguous to it is on fire, and there is reason to apprehend that the prisoners may be injured or endangered, the sheriff or jailer must remove them to a safe and convenient place, and there confine them as long as it may be necessary to avoid the danger. En. February 14, 1872.

**§ 1608. Prisoners may removed in case of pestilence.** When a pestilence or contagious disease breaks out in or near a jail, and the physician thereof certifies that it is liable to endanger the health of the prisoners, the county judge may, by a written appointment, designate a safe and convenient place in the county, or the jail in a contiguous county, as the place of their confinement. The appointment must be filed in the office of the county clerk, and authorize the sher-

iff to remove the prisoners to the place or jail designated, and there confine them until they can be safely returned to the jail from which they were taken. En. February 14, 1872.

§ 1609. **Papers served on jailer for prisoner.** A sheriff or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served, must forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so he is liable to the prisoner for all damages occasioned thereby. En. February 14, 1872.

§ 1610. **Guard for jail.** The sheriff, when necessary, may, with the assent in writing of the county judge, or in a city, of the mayor thereof, employ a temporary guard for the protection of the county jail, or for the safe-keeping of prisoners, the expenses of which are a county charge. En. February 14, 1872.

§ 1611. **Sheriff to receive all persons duly committed.** The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing and bedding, for which he shall be allowed a reasonable compensation, to be determined by the board of supervisors, and, except as provided in the next section, to be paid out of the county treasury. En. February 14, 1872.

Cal. Rep. Cit. 67, 335; 102, 430.

§ 1612. **Prisoners on civil process, when not to be received.** Whenever a person is committed upon process in a civil action or proceeding, except when the people of this state are a party thereto, the sheriff is not bound to receive such person, unless security is given on the part of the party at whose instance the process is issued, by a deposit of money to meet the expenses for him of necessary food, clothing and bedding, or to detain such person any longer than these expenses are provided for. This section does not apply to cases where a party is committed as a punish-

ment for disobedience to the mandates, process, writs or orders of court. En. February 14, 1872.

Prisoners under civil and criminal process to be kept separate: See ante, sec. 1599.

**§ 1613. Prisoners may be required to labor.** Persons confined in the county jail under a judgment of imprisonment rendered in a criminal action or proceeding, may be required by an order of the board of supervisors to perform labor on the public works or ways in the county. En. February 14, 1872.

Cal. Rep. Cit. 97, 243.

**§ 1614. Rules and regulations for the performance of labor.** The board of supervisors making such order may prescribe and enforce the rules and regulations under which such labor is to be performed; and provide clothing of such a distinctive character for said prisoners as such board, in its discretion, may deem proper. For each month in which the prisoner appears, by the record, to have given a cheerful and willing obedience to the rules and regulations, and that his conduct is reported by the officer in charge of the jail to be positively good, five days shall, with the consent of the board of supervisors, be deducted from his term of sentence. En. February 14, 1872. Am'd. 1893, 298.

Cal. Rep. Cit. 97, 243.

**§ 1615. Hair-cutting for sanitary purposes.** Whenever the board of health of any city or county, or the board of supervisors of any county, or the county physician of any county of this state, presents, or causes to be presented to the sheriff, or other officer having charge of any county jail or prison in any county or city, in this state, a certificate, or order, in writing, to the effect that it is by them, or him, considered necessary for the purpose of protecting the public health, or to prevent the introduction or spreading of disease, or to protect or improve the health of criminals under sentence,

that the hair of any criminal or criminals be cut, such sheriff, or other officer, must cut, or cause to be cut, the hair of any such person or persons in his charge convicted of a misdemeanor and sentenced to a longer term of imprisonment than fifteen days, to a uniform length of one and one-half inches from the scalp of such person or persons so imprisoned. En. Stats. 1905, 710.

This section is a codification of section 1 of the statute of 1883, page 280, to protect the public health.—Code Commissioner's Note.

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## APPENDIX.

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### ADULTERATION.

Butter and cheese: See post, title Butter.

Oleomargarine: See post, title Oleomargarine.

Olive oil: See post, title Olive Oil.

An act to punish and prohibit the sale of adulterated syrup.  
[Approved and in effect March 29, 1878. Stats. 1877-8, p. 695.]

Section 1. Any person who shall knowingly sell, or keep, or offer for sale, or otherwise dispose of any syrup, or golden drips syrup, silver drips syrup, or molasses, containing muriatic or sulphuric acids, or glucose, or adulterated with any other substance to improve the color thereof, shall be guilty of a misdemeanor.

Sec. 2. Any person violating the provisions of section one of this act shall be punished, and imprisoned in the county jail of the county in which the offense is committed, for a period not exceeding six months or by a fine not exceeding five hundred dollars, or both.

An act to prohibit the sophistication and adulteration of wine, and to prevent fraud in the manufacture and sale thereof.

[Approved March 7, 1887; 1887, 46. In effect in ninety days.]

Section 1. For the purposes of this act, pure wine shall be defined as follows: The juice of grapes fermented, preserved, or fortified for use as a beverage, or as a medicine, by

methods recognized as legitimate according to the provisions of this act; unfermented grape-juice, containing no addition of distilled spirits, may be denominated according to popular custom and demand as wine only when described as "unfermented wine," and shall be deemed pure only when preserved for use as a beverage or medicine, in accordance with the provisions of this act. Pure grape-must shall be deemed to be the juice of grapes, only in its natural condition, whether expressed or mingled with the pure skins, seeds, or stems of grapes. Pure condensed grape-must shall be deemed to be pure grape-must from which water has been extracted by evaporation, for purposes of preservation or increase of saccharine strength. Dry wine is that produced by complete fermentation of saccharine contained in must. Sweet wine is that which contains more or less saccharine appreciable to the taste. Fortified wine is that wine to which distilled spirits have been added to increase alcoholic strength, for purposes of preservation only, and shall be held to be pure when the spirits so used are the product of the grape only. Pure champagne, or sparkling wine, is that which contains carbonic acid gas or effervescence produced only by natural fermentation of saccharine matter of must, or partially fermented wine in bottle.

Sec. 2. In the fermentation, preservation, and fortification of pure wine, it shall be specifically understood that no materials shall be used intended as substitutes for grapes, or any part of grapes; nor coloring matters shall be added which are not the pure product of grapes during fermentation, or by extraction from grapes with the aid of pure grape spirits; no foreign fruit juices, and no spirits imported from foreign countries whether pure or compounded with fruit juices or other material not the pure product of grapes, shall be used for any purpose; no aniline, dyes, salicylic acid, glycerine, alum, or other chemical antiseptics or ingredients recognized as deleterious to the health of consumers, or as injurious to the reputation of wine as



pure, shall be permitted; and no distilled spirits shall be added except for the sole purpose of preservation, and without the intention of enabling trade to lengthen the volume of fortified dry wine by the addition of water, or other wine weaker in alcoholic strength.

Sec. 3. In the fermentation and preservation of pure wine, and during the operations of fining, or clarifying, removing defects, improving qualities, blending and maturing, no methods shall be employed which essentially conflict with the provisions of the preceding sections of this act, and no materials shall be used for the promotion of fermentation, or the assistance of any of the operations of wine treatment, which are injurious to the consumer or the reputation of wine as pure; provided, that it shall be expressly understood that the practices of using pure tannin in small quantities, leaven to excite fermentation only, and not to increase the material for the production of alcohol; water before or during, but not after, fermentation, for the purpose of decreasing the saccharine strength of musts to enable perfect fermentation; and the natural products of grapes in the pure forms as they exist in pure grape-musts, skins, and seeds; sulphur fumes to disinfect cooperage and prevent disease in wine; and pure gelatinous and albuminous substances, for the sole purpose of assisting fining, or clarification, shall be specifically permitted in the operations hereinbefore mentioned, in accordance with recognized legitimate custom.

Sec. 4. It shall be unlawful to sell, or expose, or offer to sell, under the name of wine, or grape-musts, or condensed musts or under any names designating pure wines or pure musts, as hereinbefore classified and defined, or branded, labeled, or designated in any way as wine or musts, or by any name popularly and commercially used as a designation of wine produced from grapes, such as claret, burgundy, hock, sauterne, port, sherry, madeira, and angelica, any substance or compound, except pure wine, or pure grape-must

or pure grape condensed must, as defined by this act, and produced in accordance with and subject to restrictions herein set forth; provided, that this act shall not apply to liquors imported from any foreign country, which are taxed upon entry by custom laws in accordance with a specific duty, and contained in original packages or vessels, and prominently branded, labeled, or marked, so as to be known to all persons as foreign products, excepting, however, when such liquor shall contain adulterations of artificial coloring matters, antiseptic chemicals, or other ingredients known to be deleterious to the health of consumers; and provided, further, that this act shall not apply to currant wine, gooseberry wine, or wines made from other fruits than the grape, which are labeled or branded and designated, and sold, or offered or exposed for sale, under names, including the word wine, but also expressing distinctly the fruit from which they are made, as gooseberry wine, elderberry wine, or the like. Any violation of any of the provisions of any of the preceding sections shall be a misdemeanor.

Sec. 5. Exceptions from the provisions of this act shall be made in the case of pure champagne, or sparkling wine, so far as to permit the use of crystallized sugar in sweetening the same according to usual customs, but in no other respect.

Sec. 6. In all sales and contracts for sale, production, or delivery of products defined in this act, such products, in the absence of a written agreement to the contrary, shall be presumed to be pure, as herein defined, and such sale or contracts shall, in the absence of such an agreement, be void, if it be established that the products so sold or contracted for were not pure as herein defined; and in such case the concealment of the true character of such products shall constitute actual fraud for which damages may be recovered, and in a judgment for damages, reasonable attorney fees, to be fixed by the court, shall be taxed as costs.

Sec. 7. The controller of the state shall cause to have engraved plates, from which shall be printed labels, which shall set forth that the wine covered by such labels is pure California wine, in accordance with this act, and leaving blanks for the name of the particular kind of wine and the name or names of the seller of the wine and place of business. These labels shall be of two forms or shapes, one a narrow strip to cap over the corks of bottles, the other a round or square and sufficiently large, say three inches square, to cover the bungs of packages in which wine is sold. Such labels shall be furnished upon proper application to actual residents, and to be used in this state only, and only to those who are known to be growers, manufactures, traders, or handlers, or bottlers of California wine; and such parties will be required to file a sworn statement with said controller, setting forth that his or their written application for such labels is and will be for his or their sole use and benefit, and that he or they will not give, sell, or loan such labels to any other person or persons whomsoever. Such labels shall be paid for at the same rate and price as shall be found to be the actual cost price to the state, and shall be supplied from time to time as needed, upon the written application of such parties as are before mentioned. Such label, when affixed to bottle or wine package, shall be so affixed that by drawing the cork from bottle or opening the bung of package, such label shall be destroyed by such opening; and before affixing such labels, all blanks shall be filled out, by stating the variety or kind of wine that is contained in such bottle or package, and also by the name or names and postoffice address of such grower, manufacturer, trader, handler, or bottler of such wine.

Sec. 8. It is desired and required that all and every grower, manufacturer, trader, handler, or bottler of California wine, when selling or putting up for sale any California wine, or when shipping California wine to parties to whom sold, shall plainly stencil, brand, or have printed

where it will be easily seen, first, "Pure California wine," and secondly his name, or the firm's name, as the case may be, both on label of bottle or package in which wine is sold and sent; or he may, in lieu thereof, if he so prefers and elects, affix the label which has been provided for in section seven. It shall be unlawful to affix any such stamp or label as above provided to any vessel containing any substance other than pure wine as herein defined, or to prepare, or to use on any vessel containing any liquid, any imitation or counterfeit of such stamp, or any paper in the similitude or resemblance thereof, or any paper of such form and appearance as to be calculated to mislead or deceive any unwary person, or cause him to suppose the contents of such vessel to be pure wine. It shall be unlawful for any person or persons, other than the ones for whom such stamps were procured, to in any way use such stamps, or to have possession of the same. A violation of any of the provisions of this section shall be a misdemeanor, and punishable by fine of not less than fifty dollars and not more than five hundred dollars, or by imprisonment in the county jail for a term of not exceeding ninety days, or by both such fine and imprisonment. All moneys collected by virtue of prosecutions had against persons violating any provisions of this or any preceding sections shall go, one-half to the informer, and one-half to the district attorney prosecuting the same.

Sec. 9. It shall be the duty of the controller to keep an account, in a book to be kept for that purpose, of all stamps, the number, design, time when and to whom furnished. The parties procuring the same are hereby required to return to the controller semi-annual statements, under oath, setting forth the number used, and how many remains on hand. Any violation of this section by the person receiving such stamps is a misdemeanor.

Sec. 10. It shall be the duty of any and all persons receiving such stamps to use the same only in their business, in no manner or in no wise to allow the same to be disposed of except in the manner authorized by this act; to not allow the same to be used by any other person or persons. It shall be their duty to become satisfied that the wine contained in the barrels or bottles is all that said label imports as defined by this act. That they will use the said stamps only in this state, and shall not permit the same to part from their possession, except with the barrels, packages, or bottles upon which they are placed as provided by this act. A violation of any of the provisions of this section is hereby made a felony.

Sec. 11. This act shall take effect and be in force ninety days after its passage.

An act to provide against the adulteration of food and drugs.

[Approved March 26, 1895. Stats. 1895, p. 71.]

Section 1. No person shall, within the state, manufacture for sale, offer for sale, or sell, any drug or article of food which is adulterated within the meaning of this act.

Sec. 2. The term "drug" as used in this act, shall include all medicine for internal or external use, antiseptics, disinfectants, and cosmetics. The term "food," as used herein, shall include all articles used for food or drink by man, whether simple, mixed, or compound.

Sec. 3. Any article shall be deemed to be adulterated within the meaning of this act:

(a) In the case of drugs: (1) If, when sold under or by a name recognized in the United States pharmacopoeia, it differs from the standard of strength, quality, or purity laid down therein. (2) If, when sold under or by a name not recognized in the United States pharmacopoeia, but which is found in some other pharmacopoeia or other standard work on materia medica, it differs materially from the

standard of strength, quality, or purity laid down in such work. (3) If its strength, quality, or purity falls below the professed standard under which it is sold.

(b) In the case of food: (1) If any substance or substances have been mixed with it, so as to lower or depreciate, or injuriously affect its quality, strength, or purity. (2) If any inferior or cheaper substance or substances have been substituted wholly or in part for it. (3) If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it. (4) If it is an imitation of, or sold under the name of another article. (5) If it consists wholly, or in part, of a diseased, decomposed, putrid, infected, tainted, or rotten animal or vegetable substance or article, whether manufactured or not; or in the case of milk, if it is the produce of a diseased animal. (6) If it is colored, coated, polished, or powdered whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is. (7) If it contains any added substance or ingredient which is poisonous or injurious to health.

Provided, that the provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food, if each and every package sold or offered for sale be distinctly labeled as mixtures or compounds, with the name and per cent of each ingredient therein, and are not injurious to health.

Sec. 4. Every person manufacturing, exposing, or offering for sale, or delivering to a purchaser, any drug or article of food included in the provisions of this act, shall furnish to any person interested, or demanding the same, who shall apply to him for the purpose, and shall tender him the value of the same, a sample sufficient for the analysis of any such drug or article of food which is in his possession.

Sec. 5. Whoever refuses to comply, upon demand, with the requirements of section four, and whoever violates any

of the provisions of this act, shall be guilty of a misdemeanor, and shall be fined not exceeding one hundred nor less than twenty-five dollars, or imprisoned in the county jail not exceeding one hundred nor less than thirty days, or both. And any person found guilty of manufacturing, offering for sale, or selling, an adulterated article of food or drug under the provisions of this act shall be adjudged to pay, in addition to the penalties hereinbefore provided for, all the necessary costs and expenses incurred in inspecting and analyzing such adulterated articles of which said person may have been found guilty of manufacturing, selling, or offering for sale.

Sec. 6. This act shall be in force and take effect from and after its passage.

An act to prevent the sale of imitation or adulterated honey, and to provide a punishment therefor.

[Approved March 26, 1895. Stats. 1895, p. 94.]

This act was superseded by the following act:

An act to prohibit the adulteration of honey, and to provide a punishment therefor.

[Approved February 23, 1897. Stats. 1897, p. 12.]

Section 1. No person shall, within this state, manufacture for sale, offer for sale, or sell any extracted honey which is adulterated by the admixture therewith of either refined or commercial glucose, or any other substance or substances, article or articles which may in any manner affect the purity of the honey.

Sec. 2. Every person manufacturing, exposing, or offering for sale or delivering to a purchaser any extracted honey, shall furnish to any person interested, or demanding the same, who shall apply to him for the purpose, and tender him the value of the same, a sample sufficient for the analysis of any such extracted honey which is in his possession.

Sec. 3. For the purposes of this act, "extracted honey" is the transformed nectar of flowers, which nectar is gathered by the bee from natural sources, and is extracted from the comb after it has been stored by the bee.

Sec. 4. Whoever violates any of the provisions of this act is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five nor more than four hundred dollars, or imprisoned in the county jail not less than twenty-five days nor more than six months, or both such fine and imprisonment. And any person found guilty of manufacturing, offering for sale, or selling any adulterated honey under the provisions of this act may, in the discretion of the court, be adjudged to pay, in addition to the penalties hereinbefore provided for, all necessary cost and expenses, not to exceed fifty dollars, incurred in analyzing such adulterated honey of which such person may have been found guilty of manufacturing, selling, or offering for sale.

Sec. 5. This act shall be in force and take effect from and after its passage.

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### ADULTERY.

An act to punish adultery.

[Approved March 15, 1872. Stats. 1871-2, p. 380.]

Section 1. Every person who lives in a state of open and notorious cohabitation and adultery is guilty of a misdemeanor, and is punishable by a fine not exceeding one thousand dollars, or imprisonment in the county jail not exceeding one year, or by both.

Sec. 2. If two persons, each being married to another, live together in a state of open and notorious cohabitation and adultery, each is guilty of a felony, and is punishable by imprisonment in the state prison not exceeding five years.

Sec. 3. A recorded certificate of marriage, or a certified



copy thereof, there being no decree of divorce, proves the marriage of a person for the purpose of this act.

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## ANIMALS.

[See act creating office of state veterinarian, March 18, 1899. Stats. 1899, p. 129.]

An act for the more effectual prevention of cruelty to animals.

[Approved March 20, 1873-4. Stats. 1873-4, 499. Amended 1901, 285; 1903, 69.]

Section 1. Any three or more citizens of the state of California, who have heretofore, or who shall hereafter, incorporate as a body corporate, under the general laws for incorporations in this state, for the purpose of preventing cruelty to animals, may avail themselves of the privileges of this act; provided, that the corporate body first formed as aforesaid in any county, shall be the only one so entitled to the benefits and privileges of this act in said county.

Sec. 2. The said societies may make and adopt by-laws governing the admission of associates and members, providing for all meetings, and for assistant and district or local officers; providing, also, for means and systems for the effectual attainment of the objects contemplated by this act; for the regulation and management of its business affairs, and for the effectual working of the societies; prescribing, also, the duties of all their officers; for the outlay of all moneys and the auditing all accounts; provided, that such by-laws shall not conflict with the laws of the state of California, or of the United States, or with any provisions of this act.

Sec. 3. Said societies shall elect officers and fill vacancies according to the provisions of their by-laws.

Sec. 4. All sheriffs, constables, police and peace officers are empowered and directed to make arrests for the vio-

lation of any of the provisions of this act, which by this act is denominated a misdemeanor, in the same manner as is by law provided for arrests in all cases of misdemeanors. [Amendment, adopted March 14, 1901. Stats. 1901, 285.]

Sec. 5. All members and agents, and all officers of each or any of the societies so incorporated, as shall by the trustees of said societies be duly authorized in writing, approved by a judge of the superior court of the county, and sworn in the same manner as are constables and peace officers, shall have power to lawfully interfere to prevent the perpetration of any act of cruelty upon any dumb animal, and may use such force as may be necessary to prevent the same, and to that end may summon to their aid any bystander; they may make arrests for the violation of any of the provisions of this act in the same manner as is herein provided for other officers; and may carry the same weapons that such officers as are named in section four of this act are authorized to carry; provided, that all such members and agents shall, when making such arrests, exhibit it and expose a suitable badge to be adopted by said society. All persons resisting said specially appointed officers, as such, shall, upon conviction, be deemed guilty of a misdemeanor. [Amendment adopted March 14, 1901. Stats. 1901, 285.]

Sec. 6. Any person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink or shelter, or to be cruelly beaten, mutilated or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the same, or in any manner abuses any animal, or fails to provide the same with proper food, drink, shelter

or protection from the weather, or who cruelly drives, rides or otherwise uses the same when unfit for labor, shall for every such offense, upon conviction, be deemed guilty of a misdemeanor. [Amendment adopted March 14, 1901. Stats. 1901, p. 285.]

Sec. 7. If any person shall carry, or cause to be carried, in or upon any vehicle, or otherwise, any domestic animal, in a cruel or inhuman manner, or knowingly and willfully authorizes or permits the same to be subjected to unnecessary torture, suffering, or cruelty of any kind, shall, upon conviction, be deemed guilty of a misdemeanor; and whenever any such person shall be taken into custody therefor by any officer, such officer may take charge of such vehicle and its contents, together with the horse or team attached to said vehicle and deposit same in some safe place of custody; and any necessary expenses which may be incurred for taking care of and keeping the same, shall be a lien thereon, to be paid before the same can be lawfully recovered; and if the said expenses, or any part thereof, remain unpaid, they may be recovered, by the person incurring the same, of the owner of said domestic animal, in any action therefor.

Sec. 8. Any person who shall cause any bull, bear, cock, dog, or other animal to fight, for his amusement or for gain, worry or injure each other; or any person who shall permit the same to be done on any premises under his charge or control; and any person who shall aid, abet, or be present at such fighting and worrying of such animal, as a spectator, shall, upon conviction, be deemed guilty of a misdemeanor.

Sec. 9. Whoever owns, possesses, keeps, or trains any bird or animal, with the intent that such bird or animal shall be engaged in an exhibition of fighting, or is present at any place, building, or tenement where preparations are being made for an exhibition of the fighting of birds or animals, with the intent to be present at such exhibition, or is present at such exhibition, shall, upon conviction, be deemed guilty of a misdemeanor.

Sec. 10. When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes that any of the provisions of law relating to or in any way affecting dumb animals, are being or are about to be violated in any particular building or place, such magistrate shall issue and deliver immediately a warrant directed to any sheriff, constable, police officer, or officer of any incorporated association, qualified as provided in the fifth section of this act, authorizing him to enter and search such building or place, and to arrest any person or persons there present violating or attempting to violate any law relating to or in any way affecting dumb animals, and to bring such person or persons before some court or magistrate of competent jurisdiction, within the city, city and county, or township within which such offense has been committed, to be dealt with according to law, and such attempt shall be held to be a violation of section six of this act. [Amendment adopted March 14, 1901. Stats. 1901, p. 286.]

Sec. 11. Any sheriff, constable, police or peace officer, or officer qualified, as provided in section five of this act, may enter any place, building or tenement, where there is an exhibition of the fighting of birds or animals, or where preparations are being made for such an exhibition, and, without a warrant, arrest all persons there present.

Sec. 12. Any person who shall impound, or cause to be impounded in any pound any domestic animal, shall supply the same during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof, shall, upon conviction, be deemed guilty of a misdemeanor. In case any domestic animal shall be at any time impounded, as aforesaid, and shall continue to be without necessary food and water for more than twelve consecutive hours, it shall be lawful for any person, from time to time, as it shall be deemed necessary, to enter into and upon any pound in which any such domestic animal shall be confined, and supply it with necessary food and water so

long as it shall remain so confined. Such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

Sec. 13. Every owner, driver, or possessor of any animal, who shall permit the same to be in any building, inclosure, lane, street, square, or lot, of any city, city and county, or township, without proper care and attention, shall, on conviction, be deemed guilty of misdemeanor. And it shall be the duty of any peace officer, or officer of the humane society, to take possession of the animal so abandoned or neglected and care for the same until it is redeemed by the owner or claimant, and the cost of caring for such animal shall be a lien on the same until the charges are paid. Every sick, disabled, infirm, or crippled animal which shall be abandoned in any city, city and county, or township, may, if after due search no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace officers, or an officer of said society, to cause the same to be killed on information of such abandonment. Such officer may likewise take charge of any animal that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated; and, if such animal is not then in the custody of its owner, such officer shall give notice thereof, to such owner, if known, any may provide suitable care for such animal until it is deemed to be in a suitable condition to be delivered to such owner, and any necessary expenses which may be incurred for taking care of and keeping the same shall be a lien thereon, to be paid before the same can be lawfully recovered. [Amendment adopted March 14, 1901. Stats. 1901, 286.]

Sec. 14. It shall be the duty of the society first or-

ganized and incorporated as herein provided, in each city and county, or county, to actively engage in enforcing the provisions of this act, and arresting and prosecuting offenders thereunder, and in preventing cruelty to animals. Every person convicted of any misdemeanor under this act, shall be punished as in law provided for the punishment of misdemeanors, and all fines and forfeitures imposed and collected in any county, or city and county, under the provisions of this act shall inure to the society in said county, or city and county, organized and incorporated as herein provided, in aid of the benevolent object for which it is incorporated, and in addition to said fines, the said society so organized and incorporated, may, in each city, or city and county, or county, where such society exists, while actively engaged in enforcing the provisions of this act, or arresting, or prosecuting offenders thereunder, or preventing cruelty to animals, be paid, as compensation therefor, from the county, or city and county, general fund by the board of supervisors, a sum not to exceed one hundred and fifty dollars per month, in the same manner as other claims against said county, or city and county, are paid. [Amendment approved March 2, 1903. Stats. 1903, p. 69. This section was also amended in 1901. Stats. 1901, 287.]

Sec. 15. All prosecutions for the violation of any of the provisions of this act shall be conducted and prosecuted in a court of competent jurisdiction, and any member of said society authorized, as provided in section five of this act, may appear and prosecute in any of said courts, for any violation of any of the provisions of this act, whether or not he be an attorney or counselor at law; provided, that all such prosecutions shall be conducted in the name of the people of the state of California.

Sec. 16. In this act the singular shall include the plural; the word "animal" shall be held to include every living dumb creature: the words "torture," "torment," and "cruelty," shall be held to include every act, omission, or

neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted, and the words "owner" and "person" shall be held to include corporations as well as individuals; and the knowledge and acts of agents of and persons employed by corporations, in regard to animals transported, owned, or employed by, or in the custody of such corporations, shall be held to be the act and knowledge of such corporations as well as such agent or employees.

Sec. 17. No part of this act shall be deemed to interfere with any of the laws of this state known as the "game laws," or any laws for the destruction of certain birds; nor shall this act be deemed to interfere with the right to destroy any venomous reptiles, or any animal known as dangerous to life, limb, or property, or to interfere with the right to kill all animals used for food, or with any properly conducted scientific experiments or investigations, which experiments or investigations shall be performed only under the authority of the faculty of some regularly incorporated medical college or university of the state of California.

Sec. 18. The act entitled "An act for the more effectual prevention of cruelty to animals," approved March thirtieth, eighteen hundred and sixty-eight, and amendments thereto, approved March fifteenth, eighteen hundred and seventy-two, are hereby repealed.

Sec. 19. This act shall take effect from and after its passage.

Sec. 20. Whoever shall cut the solid part of the tail of any horse in the operation known as "docking," or by any other operation performed for the purpose of shortening the tail, and whoever shall cause the same to be done, or assist in doing such cutting, shall, upon conviction, be deemed guilty of a misdemeanor. [New section added March 14, 1901. Stats. 1901, p. 287.]

Sec. 21. Every animal which is unfit, by reason of its physical condition, for the purpose for which such animals



are usually employed, and when there is no reasonable probability of such animal ever becoming fit for the purpose for which it is usually employed, shall be by the owner or lawful possessor of the same, deprived of life within twelve hours after being notified by any peace officer, or officer of said society, to kill the same, and such owner, possessor, or person omitting or refusing to comply with the provisions of this section, shall upon conviction, be deemed guilty of a misdemeanor, and after such conviction the court or magistrate having jurisdiction of such offense shall order any peace officer, or officer of said society, to immediately kill such animal; provided, that this shall not apply to such owner keeping any old or diseased animal belonging to him on his own premises with proper care. [New section added March 14, 1901. Stats. 1901, p. 287.]

Sec. 22. Any person or persons holding a lien or liens against any animal or animals under the provisions of this act may satisfy such lien as follows: If such lien be not paid, by the party or parties responsible, within three days after the obligation becomes due, then the party or parties holding such lien may resort to the proper court to satisfy the claim; or he or they, three days after the charges against such property becomes due, may sell the same, or such undivided fraction thereof as may become necessary, to defray the amount due and costs of sale, by giving three days' notice of the sale by advertising in some newspaper published in the county, or city and county, in which the lien has attached to the property; or, if there is no paper published in the county, then by posting notices of the sale in three of the most public places in the town or township for three days previous to the sale. Said notices shall contain an accurate description of the property to be sold, together with the terms of sale, which must be for cash, payable on the consummation of the sale. The proceeds of the sale must be applied to the discharge of the lien and the costs of



sale; the remainder, if any, must be paid over to the owner, if known, and if not known must be paid into the treasury of the humane society of the county, or city and county, wherein the sale takes place; if no humane society exists in the county, then the remainder shall be paid into the county treasury. [New section added March 14, 1901. Stats. 1901, p. 287.]

An act to prohibit the use of the bristle bur, tack bur, or other like devices on horses or other animals in this state.

[Approved March 13, 1903. Stats. 1903, p. 139.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. It shall be unlawful hereafter in this state for any one, owner, driver or other person, having the care, custody or control of any horse or other animal, to use what is known as the bristle bur, tack bur, or other like device, by whatsoever name known or designated, on any said horse or other animal for any purpose whatsoever.

Sec. 2. A violation of the provisions of this act shall be deemed a misdemeanor and any one found guilty thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred and fifty dollars, or by imprisonment in the county jail not less than ten nor more than one hundred and seventy-five days, or may be punished by both such fine and imprisonment.

Sec. 3. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its passage.

An act to prevent tampering with animals, and to prevent the giving or administering of poison or drugs to horses, cattle, dogs, animals, and other livestock, except for medicinal purposes, and making the same a misdemeanor.

[Approved March 23, 1901. Stats. 1901, 553.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. It shall be unlawful for any person or persons, except for medicinal purposes, to administer any poison, drug, medicine, or other noxious substance, to any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animals, or other livestock, entered or about to be entered in any race or upon any race-course in the state of California, or entered or about to be entered at or with any agricultural park, or association, race-course, or corporation, or other exhibition for competition for prize, reward, purse, premium, stake, sweepstakes, or other reward, or to expose any such poison, drug, medicine, or noxious substance, with intent that the same shall be taken, inhaled, swallowed, or otherwise received by any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animal, or other livestock, with intent to impede or affect the speed, endurance, sense, health, physical condition, or other character or quality of such above mentioned animal, or other livestock.

Sec. 2. It shall be unlawful for any person or persons to cause to be taken by or placed upon or in the body of any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, animal, or other livestock, entered or about to be entered in any race upon any race-course in the state of California, or entered or about to be entered at or with any agricultural park, association, race-course or corporation, or other exhibition for competition for prize, reward, purse, premium, stake, sweepstakes, or other reward, any sponge, wood, or foreign substance of any kind, with intent to impede or affect the speed, endurance, sense, health, physical condition, of such horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animal, or other livestock.

Sec. 3. Any person or persons who shall violate any of the provisions of sections one or two of this act shall be guilty of a misdemeanor.

Sec. 4. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 5. This act shall take effect immediately.

An act to prevent the spread of contagious or infectious diseases among domestic animals.

Section 1. Any person or persons, company or corporation, owning or having possession or control of any animal affected by any contagious or infectious disease, who shall fail to keep the same within an inclosure, or herd the same in some place where they will be secure from contact with other animals of like kind not so affected, or who shall suffer such infected animals to be driven on the public highway or to range where they will be likely to come in contact with other animals not so affected, shall be guilty of a misdemeanor, and, on conviction, punished by a fine of not more than five hundred dollars for each offense.

Sec. 2. This act shall take effect immediately. [Approved March 23, 1893. Stats. 1893, 302.]

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## ARTESIAN WELLS.

An act to regulate the use of artesian wells, and to prevent the waste of subterranean waters in this state.

[Approved March 9, 1878. Stats. 1877-8, 195. Sec. 8  
Repealed by Stats. 1901, 284.]

Section 1. Any artesian well which is not capped, or furnished with such mechanical appliance as will readily and effectively arrest and prevent the flow of water from such well, is hereby declared to be a public nuisance. The owner, tenant, or occupant of the land upon which such well is situated, who causes, permits, or suffers such public nuisance, or suffers or permits it to remain or continue, is guilty of a misdemeanor.

Sec. 2. Any person owning, possessing, or occupying any land upon which is situated an artesian well, who causes,

suffers, or permits the water to unnecessarily flow from such well, or to go to waste, is guilty of a misdemeanor.

Sec. 3. An artesian well is defined, for the purposes of this act, to be any artificial well the waters of which will flow continuously over the natural surface of the ground adjacent to such well at any season of the year.

Sec. 4. Waste is defined, for the purposes of this act, to be the causing, suffering, or permitting the waters flowing from such well to run into any river, creek, or other natural watercourse or channel, or into any bay, lake, or pond, or into any street, road, highway, or upon the land of any person other than that of the owner of such well, or upon public lands of the United States or of the state of California, unless it be used thereon for the purposes and in the manner that it may be lawfully used upon the land of the owner of such well; provided, that this section shall not be so construed as to prevent the use of such waters for the proper irrigation of trees standing along or upon any street, road, or highway, or for ornamental ponds or fountains, or the propagation of fish.

Sec. 5. Any person violating any of the provisions of this act may be proceeded against for a misdemeanor in any justice's court of the county in which such well is located, and shall, upon conviction, be fined for each offense not less than ten nor more than fifty dollars. There shall, also, upon conviction had, in addition to such fine, be taxed against such party the cost of prosecution. Such fine and costs may be collected as in other criminal cases, and the justice may also issue an execution upon the judgment therein rendered, and the same may be enforced and collected as in civil cases.

Sec. 6. It shall be the duty of the supervisors or road-masters, on complaint of any citizen within their respective districts, and for that purpose may at all proper times enter upon the premises where such well is situated; and it shall be his duty to institute, or cause to be instituted,

criminal action for all violations of the provisions of this act, or for all public offenses defined in this act, committed within such district.

Sec. 7. An act entitled "An act to regulate the use of artesian wells, and to prevent the waste of subterranean waters in Santa Clara and Los Angeles counties," approved March eighteenth, eighteen hundred and seventy-six, and all other acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

Sec. 8. Repealed by Stats. 1901, p. 284. This repealed section was as follows: "This act shall not apply to artesian wells in the county of San Bernardino."

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## BUOYS AND BEACONS.

An act for the protection of buoys and beacons.

[Approved March 26, 1874. Stats. 1873-4, 619.]

Section 1. Any person or persons who shall moor any vessel or boat of any kind, or any raft or scow, to any buoy or beacon placed in the waters of California by authority of the United States lighthouse board, or shall in any manner hang on to the same, with any vessel, boat, raft, or scow, or shall willfully remove, damage, or destroy any such buoy or beacon, or any part of the same, or shall cut down, remove, damage, or destroy any beacon or beacons erected on land in this state by the authority aforesaid, shall, for every such offense, be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months; one-third of the fine in such case to be paid to the informer, and two-thirds thereof to the lighthouse board, to be used in repairing said buoys and beacons.

Sec. 2. The cost of repairing or replacing any such buoy or beacon which may have been misplaced, damaged, or

destroyed by any vessel, boat, raft, or scow being made fast to the same, shall, when said cost shall have been legally ascertained, be a lien upon such vessel, boat, raft, or scow, and recovered against the same, and the owner or owners thereof, in an action of debt, in any court of competent jurisdiction in this state.

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### BUTTER.

[See act to prevent deception, etc., February 23, 1899. Stats. 1899, p. 25.]

Act to prevent sale of oleomargarine as butter: See post, title Oleomargarine.

An act entitled an act to prevent the sale of short-weight rolls of butter.

[Approved March 11, 1893. Stats. 1893, 151.]

Any person or persons, firm or corporation, who offers for sale roll butter not of full weight to each roll, shall be guilty of a misdemeanor.

This act shall go into effect sixty days after its passage.

An act to prevent deception in the manufacture and sale of butter and cheese, to secure its enforcement, and to appropriate money therefor.

[Approved March 4, 1897. Stats. 1897, 65.]

Section 1. That for the purposes of this act, every article, substance, or compound, other than that produced from pure milk or cream from the same, made in the semblance of butter, and designed to be used as a substitute for butter made from pure milk or cream from the same, is hereby declared to be imitation butter; and that for the purposes of this act, every article, substance, or compound, other than that produced from pure milk or cream from the same, made in the semblance of cheese, and designated to be used as substitute for cheese made

from pure milk or cream from the same, is hereby declared to be imitation cheese; provided, that the use of salt, rennet, and harmless coloring matter for coloring the product of pure milk or cream, shall not be construed to render such product an imitation; and provided, that nothing in this section shall prevent the use of pure skimmed milk in the manufacture of cheese.

Sec. 2. No person, by himself or his agents or servants, shall render or manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell, or use, or serve to patrons, guests, boarders, or inmates, in any hotel, eating-house, restaurant, public conveyance or boarding-house, or public or private hospital, asylum, or eleemosynary or penal institution, any article, product, or compound made wholly or partly out of any fat, oil, or oleaginous substance or compound thereof, not produced directly and at the time of manufacture from unadulterated milk or cream from the same, which article, product, or compound shall be colored in imitation of butter or cheese produced from unadulterated milk or cream from the same; provided, that nothing in this section shall be construed to prohibit the manufacture or sale, under the regulations hereinafter provided, of substances or compounds, designed to be used as an imitation, or as a substitute for butter or cheese made from pure milk or cream from the same, in a separate and distinct form, and in such a manner as will advise the consumer of its real character, free from coloration, or ingredients, that causes it to look like butter or cheese made from pure milk or cream, the product of the dairy.

Sec. 3. Each person who, by himself or another, lawfully manufactures any substance designed to be used as a substitute for butter or cheese, shall mark by branding, stamping, or stenciling upon the top and sides of each tub, firkin, box, or other package in which such article shall be kept, and in which it shall be removed from the place where it is produced, in a clear and durable manner, in

the English language, the words "substitute for butter," or "substitute for cheese," as the case may be, in printed letters in plain Roman type, each of which shall not be less than one inch in height by one-half inch in width, and in addition to the above shall prepare a statement, printed in plain Roman type, of a size not smaller than pica, stating in the English language its name, and the name and address of the manufacturer, the name of the place where manufactured or put up, and also the names and actual percentages of the various ingredients used in the manufacture of such imitation butter or imitation cheese; and shall place a copy of said statement within and upon the contents of each tub, firkin, box, or other package, and next to that portion of each tub, firkin, box, or other package as is commonly and most conveniently opened; and shall label the top and sides of each tub, firkin, box, or other package by affixing thereto a copy of said statement, in such manner, however, as not to cover the whole or any part of said mark of "substitute for butter," or "substitute for cheese."

Sec. 4. No person, by himself or another, shall knowingly ship, consign, or forward by any common carrier, whether public or private, any substance designed to be used as a substitute for butter or cheese, unless the same be marked and contain a copy of the statement, and be labeled as provided by section three of this act; and no carrier shall knowingly receive the same for the purpose of forwarding or transporting, unless it shall be manufactured, marked, and labeled as hereinbefore provided, consigned, and by the carrier receipted for by its true name; provided, that this act shall not apply to any goods in transit between foreign states and across the state of California.

Sec. 5. No person, or his agent, shall knowingly have in his possession or under his control any substance designed to be used as a substitute for butter and cheese unless the tub, firkin, box, or other package containing



the same, shall be clearly and durably marked and contain a copy of the statement, and be labeled as provided by section three of this act; and if the tub, firkin, box, or other package be opened, then a copy of the statement described in section three of this act shall be kept, with its face up, upon the exposed contents of said tub, firkin, box, or other package; provided, that this section shall not be deemed to apply to persons who have the same in their possession for the actual consumption of themselves or family.

Sec. 6. No person, by himself or another, shall sell, or offer for sale, or take orders for the future delivery of, any substance designed to be used as a substitute for butter or cheese, under the name of or under the pretense that the same is butter or cheese; and no person, by himself or another, shall sell any substance designed to be used as a substitute for butter or cheese, unless he shall inform the purchaser distinctly, at the time of the sale, that the same is a substitute for butter or cheese, as the case may be, and shall deliver to the purchaser, at the time of the sale, a separate and distinct copy of the statement described in section three of this act; and no person shall use in any way, in connection or association with the sale, or exposure for sale, or advertisement, of any substance designed to be used as a substitute for butter or cheese, the words "butterine," "creamery," or "dairy," or the representation of any breed of dairy cattle, or any combination of such words and representation, or any other words or symbols, or combinations thereof, commonly used by the dairy industry in the sale of butter or cheese.

Sec. 7. No keeper or proprietor of any bakery, hotel, boarding-house, restaurant, saloon, lunch counter, or other place of public entertainment, or any person having charge thereof, or employed thereat, or any person furnishing board for others than members of his own family, or for any employee where such board is furnished as the compensation or as a part of the compensation of any such employee,

shall place before any patron or employee, for use as food any substance, designed to be used as a substitute for butter and cheese, unless the same be accompanied by a copy of the statement described in section three of this act, and by a verbal notification to said patron that such substance is a substitute for butter or cheese.

Sec. 8. No action can be maintained on account of any sale or other contract made in violation of, or with intent to violate, this act by or through any person who was knowingly a party to such wrongful sale or other contract.

Sec. 9. Every person having possession or control of any substance designed to be used as a substitute for butter or cheese which is not marked as required by the provisions of this act, shall be presumed to have known, during the time of such possession or control, that the same was imitation butter, or imitation cheese, as the case may be.

Sec. 10. No person shall efface, erase, cancel, or remove any mark, statement, or label provided for by this act, with intent to mislead, deceive, or to violate any of the provisions of this act.

Sec. 11. No butter or cheese not made wholly from pure milk or cream, salt, harmless coloring matter, shall be used in any of the charitable or penal institutions that receive assistance from the state.

Sec. 12. Whoever shall violate any of the provisions or sections of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished, for the first offense, by a fine of not less than fifty dollars, nor more than one hundred and fifty dollars, or by imprisonment in the county jail for not exceeding thirty days; and for each subsequent offense, by a fine of not less than one hundred and fifty dollars, nor more than three hundred dollars, or by imprisonment in the county jail not less than thirty days, nor more than six months, or by both such fine and imprisonment, in the discretion of

the court. One-half of all the fines collected under the provisions of this act shall be paid to the person or persons furnishing information upon which conviction is procured.

Sec. 13. Whoever shall have possession or control of any imitation butter or imitation cheese, or any substance designed to be used as a substitute for butter or cheese, contrary to the provisions of this act, shall be construed to have possession of property with intent to use it as a means of committing a public offense, within the meaning of chapter three, of title twelve, of part two, of an act to establish a Penal Code; provided, that it shall be the duty of the officer who serves a search warrant issued for imitation butter or imitation cheese, or any substance designed to be used as a substitute for butter or cheese, to deliver to the agent of the dairy bureau, or to any person by such dairy bureau authorized in writing to receive the same, a perfect sample of each article seized by virtue of such warrant, for the purpose of having the same analyzed, and forthwith to return to the person from whom it was taken the remainder of each article seized as aforesaid. If any sample be found to be imitation butter or imitation cheese, or substance designated to be used as a substitute for butter or cheese, it shall be returned to and retained by the magistrate as and for the purpose contemplated by section fifteen hundred and thirty-six of an act to establish a Penal Code; but if any sample be found not to be imitation butter or imitation cheese, or a substance designed to be used as a substitute for butter or cheese, it shall be returned forthwith to the person from whom it was taken.

Sec. 14. It shall be the duty of the district attorney, upon the application of the dairy bureau, to attend to the prosecution, in the name of the state, of any suit brought for the violation of any of the provisions of this act within his district.

Sec. 15. The governor shall on or before the first day of July, eighteen hundred and ninety-seven, appoint three resident citizens of this state, who shall have practical experience in the manufacture of dairy products, to constitute a state dairy bureau, and which shall succeed the one now in existence in every respect. Members of this bureau shall hold office for the period of four years from and after the first day of July, eighteen hundred and ninety-seven, and until their successors are appointed and qualified; provided, that the first members appointed under the provisions of this act shall at their first meeting so classify themselves by lot as that one shall go out of office at the expiration of two years, one at the expiration of three years, and the other at the expiration of four years. Any vacancy shall be filled by appointment by the governor for the unexpired term. The members of said bureau shall serve without compensation, and within twenty days after their appointment, shall take the oath of office as required by the constitution, and they shall thereupon meet and organize by electing a chairman and treasurer. Any one of them may be removed by the governor, for neglect or violation of duty. They shall make a report in detail to the legislature not later than the first day of December next preceding the meetings thereof.

Sec. 16. It shall be the duty of the state dairy bureau to secure, as far as possible, the enforcement of this act. The state dairy bureau shall have power to employ an agent at a salary of twelve hundred dollars a year, and such assistants or chemists, as from time to time may be necessary therefor.

Sec. 17. There is hereby appropriated for the use of this state dairy bureau, out of any money in the state treasury not otherwise appropriated, the sum of five thousand dollars for each fiscal year hereafter, and commencing with the forty-ninth fiscal year. All salaries, fees, costs, and expenses of every kind incurred in the carrying out

of the law shall be drawn from the sum so appropriated, and the state controller shall draw his warrant on the state treasurer in favor of the person entitled to the same.

Sec. 18. All acts and parts of acts inconsistent with this act are hereby repealed.

Sec. 19. This act shall take effect immediately.

For the prior acts on this subject, see Stats. 1895, p. 41, and Stats. 1881, p. 14. .

Act to prevent sale of oleomargarine as butter: See post, title Oleomargarine.

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### CONSPIRACY.

An act to limit the meaning of the word "conspiracy," and also the use of "restraining orders" and "injunctions," as applied to disputes between employers and employees in the state of California.

[Approved March 20, 1903. Stats. 1903, 289.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. No agreement, combination, or contract by or between two or more persons to do or procure to be done, or not to do or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees in the state of California shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person would not be punishable as a crime, nor shall such agreement, combination, or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto. Nothing in this act shall exempt from punishment, otherwise than as herein excepted, any persons guilty of conspiracy, for which punishment is now provided by any act of the legislature, but

such act of the legislature shall, as to the agreements, combinations, and contracts hereinbefore referred to, be construed as if this act were therein contained; provided, that nothing in this act shall be construed to authorize force or violence, or threats thereof.

Sec. 2. This act shall take effect immediately.

An act making a conspiracy to commit any crime against the person of, or an attempt to kill or commit any assault upon, the president or vice-president of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any executive department of the United States, a felony; and providing a penalty therefor.

[Approved February 28, 1903. Stats. 1903, 58.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. If two or more persons conspire to commit any crime against the person of the president or vice-president of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States, they are guilty of felony, and upon conviction thereof, shall be punished by imprisonment in the state prison not less than ten years.

Sec. 2. Every person who attempts to kill, or who commits any assault upon the president or vice-president of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States, is guilty of a felony; and upon conviction thereof, shall be punished by imprisonment in the state prison not less than ten years.

Sec. 3. This act shall take effect and be in force from and after its passage.

## CONVICTS.

An act providing for the furnishing to sheriffs and chiefs of police of certain information, descriptions, and photographs of convicts about to be discharged, by the wardens of state prisons.

Section 1. Within thirty days prior to the expiration of the sentence of any convict confined in any state prison of this state the warden of such state prison shall forward to each sheriff and chief of police of this state a photograph of such convict, together with a minute description of his person and marks of identification, together with a statement of the nature of the crime he is imprisoned for.

Sec. 2. Section one of this act shall be construed so as to apply only to convicts who have served a prior term or terms in a state prison or house of correction.

Sec. 3. Any expenditure incurred in carrying out the provisions of this act shall be paid for out of the appropriation made for the support of state's prisons.

Sec. 4. This act shall take effect immediately and be in force from and after its passage. [Stat. approved March 27, 1897; Stats. 1897, p. 213.]

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CORONERS.

Act relating to costs of coroner's inquest in state prison:  
See post, title Costs.

An act providing in counties of the first class for the appointment by the coroner of a competent physician for the performance of autopsies upon the bodies of deceased persons when inquests are held, and fixing the compensation therefor.

[Approved March 14, 1895. Stats. 1895, 52.]

Section 1. In counties of the first class, the coroner shall appoint a competent physician, whose duties it shall

be to perform autopsies upon the bodies of all deceased persons when inquests are held. Such physician shall, after the performance of such autopsy, certify in writing his professional opinion as to the cause of death, which certificate shall be filed with said coroner.

Sec. 2. The physician so appointed shall receive as compensation for his said services the sum of twenty-four hundred dollars per annum, which shall be paid out of the general fund of the county in monthly installments of two hundred dollars, at the same time and in the same manner as county officers are paid.

Sec. 3. This act shall take effect and be in force from and after its passage.

An act to provide an official stenographic reporter to the coroner of each county, or city and county, having one hundred thousand or more inhabitants, and providing the mode in which such reporter shall be appointed, and establishing the compensation and prescribing the duties of such reporter.

[Approved March 26, 1895. Stats. 1895, 168.]

(Superseded as to San Francisco by its charter.)

Section 1. It shall be lawful for the coroner of every county, or city and county, of this state, having one hundred thousand or more inhabitants, to select and appoint an official stenographic reporter, such reporter to hold office during the pleasure of the coroner making the appointment.

Sec. 2. The said official reporter shall be allowed and shall receive compensation as follows: One hundred and fifty dollars per month.

Sec. 3. It shall be the duty of said reporter to attend all inquests held by the coroner of the said county, or city and county, and report in shorthand all testimony of witnesses, and all the proceedings of said inquests, and to transcribe the same into legible longhand, and furnish two typewritten copies thereof, and shall certify the same,



and file one of the copies with the said coroner, and the other copy with the clerk of the said county, or city and county. He shall also, within a reasonable time after such testimony is taken file with the said clerk the shorthand notes taken by him at each inquest.

Sec. 4. The said official reporter shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office.

Sec. 5. Any report of the said official reporter duly appointed and sworn, when written out in longhand writing and certified by him as being a correct transcript of the testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings.

Sec. 6. The salary of said reporter shall be audited and paid monthly out of the general fund of the said county, or city and county.

Sec. 7. This act shall take effect from and after its passage.

An act concerning the attendance of physicians and surgeons in certain cases, and to provide payment for making chemical and post-mortem examinations.

[Approved February 8, 1872. Stats. 1871-2, 81.]

(The code commissioners say as to this act: "As to § 1, superseded by County Government Act, 1897, 490, § 142.")

Coroner may summon physician, surgeon, or chemist.

Section 1. The coroner or other officer holding an inquest upon the body of a deceased person may summon a physician or surgeon to inspect the body, or a chemist to make an analysis of the contents of the stomach, or the tissues of the body of the deceased, and to give a professional opinion as to the cause of the death.

Compensation.

Sec. 2. Any physician, surgeon, or chemist professionally attending as a witness on an inquest, or upon a trial of any person charged with murder or manslaughter, or

in cases de lunatico inquirendo, as above provided, shall be allowed a reasonable compensation for such attendance or examination by the board of supervisors, upon the written certificate of the court or officer requiring such services as to the extent and supposed value of the same; provided, that such certificate shall not be conclusive as to the amount of compensation.

An act in relation to coroners in the city and county of San Francisco.

[Approved March 16, 1872. Stats. 1871-2, 403. Amended 1873-4, 908; 1875-6, 397.]

(The code commissioners say as to this act: "Modified as to appointees by § 2, ch. VI, art. IV, charter of San Francisco; superseded as to coroners generally by County Government Act, 1897, 490. See Kuhlman v. Superior Court, 122 Cal. 636.")

An act to provide for furnishing assistants to the coroner of each city or city and county having one hundred thousand or more inhabitants, and providing the mode in which such assistants shall be appointed and designated, and establishing the compensation and prescribing the duties of such assistants.

[Approved March 23, 1893. Stats. 1893, 190.]

(As to San Francisco, superseded by the charter.)

Section 1. It shall be lawful for the coroner of every city or city and county of this state having one hundred thousand or more inhabitants to select and appoint five assistants. Such assistants shall hold their respective offices at the pleasure of said appointing power.

Sec. 2. Such assistants shall be classified and designated as follows: First deputy coroner, second deputy coroner, third deputy coroner, fourth deputy coroner, messenger. Said deputies shall be allowed and receive salaries as follows: The salary of the first deputy shall

be two hundred dollars per month; the salary of the second deputy shall be one hundred and fifty dollars per month; the salary of the third and fourth deputies shall be one hundred and twenty-five dollars per month each; the salary of the messenger shall be seventy-five dollars per month. It shall be the duty of said deputies to act as deputy coroners in all matters, except as to those duties which are forbidden to be delegated. It shall be the duty of the messenger to have charge of the dead-wagon, keep in order the morgue, and perform such other duties as are required by the coroner or his deputies.

Sec. 3. The salaries of the said assistants shall be audited and paid monthly out of the general fund of the said city or city and county.

This act shall take effect from and after its passage.

An act prescribing the fees of coroners and elisors and their mode of payment.

[Approved March 30, 1874; 1873-4, 794.]

Superseded by the County Government Acts: See Stats. 1897, 481, § 105.

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## CORPORATIONS.

An act to protect stockholders and persons dealing with corporations in this state.

[Approved March 29, 1878. Stats. 1877-8, 695. Am'd. 1905, p. 786.]

Section 1. Any superintendent, director, secretary, manager, agent, or other officer, who shall willfully subscribe, existing under the laws of this state, or transacting business in the same, and any person pretending or holding himself out as such superintendent, director, secretary, manager, agent, or other officer, who shall willfully subscribe, sign, indorse, verify, or otherwise assent to the publication, either generally or privately, to the stockholders or other persons dealing with such corporation, or its stock, any

untrue or willfully and fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or other paper or document intended to produce or give, or having a tendency to produce or give, to the shares of stock in such corporations a greater value, or less apparent or market value than they really possess, or with the intention of defrauding any particular person or persons, or the public, or persons generally, shall be deemed guilty of a felony, and on conviction thereof, shall be punished by imprisonment in the state prison or county jail not exceeding two years, or by a fine not exceeding five thousand dollars, or by both.

Sec. 2. All acts and parts of acts in conflict with this act are hereby repealed.

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### COSTS.

An act concerning the payment of the expenses and costs of the trial of convicts for crimes committed in the state prison, and to pay the costs of the trial of escaped convicts, and to pay for the expenses of coroner inquests in said prison.

[Approved April 12, 1880. Stats. 1880, p. 43.]

Section 1. The costs and expenses of all trials which have heretofore been had in the county in this state where the state prison is situated, for any crime committed by any convict in the state prison, and the costs of guarding and keeping such convict, and the execution of the sentence of said convict by said county, and the costs and expenses of all trials heretofore had for the escape of any convict from the state prison, and the costs and expenses of all coroner inquests heretofore had of any convict at the state prison by the county where said prison has been situated, shall be certified to by the county clerk of said county wherein said trials and inquests have been held to

the board of state prison directors for their approval, and after such approval they shall pay the same out of the money appropriated for the support of the state prison, to the county treasurer of said county where said trials have been had; "provided, that this act shall not apply to any costs or expenses incurred since January first, eighteen hundred and seventy-three."

Sec. 2. This act shall only apply to cases which have not been settled for by the state.

Sec. 3. This act shall take effect immediately.

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### DAIRIES.

[Dairies, inspection of: See Stats. 1899, p. 171.]

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### ELECTIONS.

An act to prohibit "piece clubs," and to prevent extortion from candidates for office.

[In effect March 14, 1878. Stats. 1877-8, 236.]

(The code commissioners say of this act: "Modified, if not repealed, by the Purity of Elections Act of 1893, p. 12.")

Section 1. All payments and contributions of money for election expenses, made by candidates for office in this state shall hereafter be assessed and made by such candidates by voluntary assessment among themselves, and not otherwise, and at meetings to be called for such purpose, at which meetings none but candidates for office at the next ensuing election shall be present or participate.

Sec. 2. Any person being a candidate for office in this state, who shall directly or indirectly pay, or knowingly cause to be paid, any money or other valuable thing to any person, as an assessment or contribution for the expenses of the election at which such person or candidate is to be voted for, except the contribution or assessment so agreed

upon by such meeting of candidates, shall be deemed guilty of a misdemeanor, and, upon conviction, punished accordingly.

Sec. 3. It shall not be lawful for any committee, convention, or other association, formed for the purpose of nominating a candidate or candidates for office in this state, to levy, assess, collect, demand, or receive, directly or indirectly, any money or other valuable thing from any candidate or candidates nominated for office by such committee, convention, or other association, either for the expenses of printing or distributing tickets, or for any of the expenses of the election of such candidate or candidates, or as or for the expenses of such nominating convention, committee, or other association, or under or upon any pretense whatsoever.

Sec. 4. Any officer or member of any such committee, convention, or association, or other person, who shall vote for, aid, authorize, assist, or consent to any such levy, assessment, or collection from any candidate or candidates, shall be deemed guilty of a misdemeanor, and, on conviction, punished accordingly.

Sec. 5. Any person who shall demand, ask for, collect, or receive, either directly or indirectly, any money or other valuable thing from any candidate or candidates for office in this state, on the ground that such money or other valuable thing has been assessed to such candidate or candidates, or asked for, demanded, or required by any person, nominating convention, committee, or other political association, as or for the costs of printing or distributing tickets, or for the payment of election expenses of any kind or nature whatsoever, or as or for the expenses of such nominating committee, convention, or association, shall, for each offense, be deemed guilty of a misdemeanor, and, on conviction, shall be punished accordingly; but nothing herein contained shall prevent the candidates at any election from assembling together and voluntarily assessing themselves

for any expenses authorized by law for the common good of the ticket, and to collect and disburse the same by agents appointed for such purpose.

Sec. 6. Any person who shall voluntarily and unsolicited offer to work for and assist, or in any manner whatsoever contribute to the nomination or election of any candidate or other person to any office in this state, for the purpose and with the intent to have such candidate or person pay for, or in any manner compensate such person so offering for such work or services, shall be deemed guilty of a misdemeanor, and, on conviction, punished accordingly.

Sec. 7. This act shall apply only to the city and county of San Francisco.

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### EMIGRATION.

An act to promote emigration from the state of California.

[In effect March 26, 1880. Stats. 1880, 15.]

Section 1. It shall be unlawful for the owners, officers, agents, or employees of any steamship company, sailing vessel, or railroad company or firm, or corporation that may be engaged in this state in the transportation of passengers to and from any foreign port, to withhold or refuse any person or persons the right to purchase a passage ticket or tickets to any foreign country for the reason that he or they have not presented a certificate, card, or other document whatsoever, showing that such person has paid in full, or in part, any or all dues, debts, or demands, or otherwise, or any sum whatsoever, to any society, company, corporation, association, or individual, or firm; and any person or corporation who shall violate the provisions of this section, or in pursuance of any agreement, oral or written, refuse to sell a passage ticket to any person to any foreign country, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by

a fine of not less than one hundred nor more than five hundred dollars; provided, that nothing in this section shall be construed in any manner to apply to any passport or other document required by law to be presented, having the signature or seal of any foreign consul resident within this state.

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### EMPLOYMENT AGENTS.

An act defining the duties and liabilities of employment agents, making the violation thereof a misdemeanor and fixing penalties therefor.

[Approved February 13, 1903. Stats. 1903, p. 14.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. Any person, firm, corporation, or association pursuing for profit the business of furnishing, directly or indirectly, to persons seeking employment, information enabling, or tending to enable, such persons to secure such employment, or registering for any fee, charge, or commission the names of any person seeking employment as aforesaid, shall be deemed to be an employment agent within the meaning of this act.

Sec. 2. It shall be unlawful for an employment agent in the state of California to receive directly or indirectly, any money or other valuable consideration from any person seeking employment, for any information or assistance furnished or to be furnished by said agent to such person, enabling or tending to enable said person to secure such employment prior to the time at which said information or assistance is actually thus furnished.

Sec. 3. It shall be unlawful for any employment agent in the state of California, to induce, influence, persuade, or engage any person to change from one place to another in this state, or to change from any place in any state, territory, or country, to any place in this state to work in any branch of labor, through or by means of any representations whatsoever, whether spoken, written or advertised in printed form, unless such employment agent shall have as-



sured himself beyond a reasonable doubt that such representations are true and cover all the material facts affecting the employment in question. Whenever any such representation, whereby any person is induced, influenced, persuaded or engaged to change from one place to another in this state, or from any place in any state, territory or country, to any place in this state to work in any branch of labor, shall prove to be in any material degree at variance with, or short of the truth, the employment agent responsible for such representations shall immediately return to any person who shall have been influenced, by such representations, any and all fees paid by such person to said employment agent on the strength of such representations, together with an amount of money sufficient to cover all necessary expenses incurred by such person influenced by such representations in going to and returning from, any place he shall have been influenced by such representations to visit in the hope of employment.

Sec. 4. [Repealed. Statutes 1905, p. 144.]

Sec. 5. The tax collector or license collector of each respective city, county or city and county of the state of California shall furnish quarterly, to the commissioner of the bureau of labor statistics of the state of California the name and address of each employment agent doing business in said city, county or city and county; provided, that where the license is not a county license, but is collected by a municipal government, then the municipal collector of said tax shall furnish the names and addresses.

Sec. 6. Each employment agent in the state of California shall keep a written record, which shall show the name of each person making application to said agent for registration, information or assistance, such as is described in section two hereof; the name of each such person to whom such registration or information is furnished; and the amount received in each such case therefor; the name of each person, who, having received and paid for, as herein contemplated, registration, information or assistance such as

is described in section two hereof, fails to secure the employment regarding which such registration, information or assistance is furnished, together with the reason why said employment was not by said person secured, and the name of each person to whom return is made, in accordance with the provisions of section three hereof, of any money or other consideration such as is in said section named, together with the amount of said money, or the value of said consideration, thus returned.

Sec. 7. Each employment agent in the state of California shall permit the commissioner of the bureau of labor statistics of said state, by himself, or by his deputies or agents, to have at all times access to, and to inspect, the record in section six hereof named, and upon demand in writing therefor by said commissioner, shall furnish to such commissioner a true copy of said record, or of such portion thereof as said demand in writing shall require a copy of to be thus furnished.

Sec. 8. Any employment agent or other person violating, or omitting to comply with, any of the provisions of this act, shall be deemed guilty of misdemeanor, and upon conviction shall be punished by fine not exceeding five hundred (500) dollars, or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment in the discretion of the court.

Sec. 9. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 10. This act shall take effect from and after the date of its passage.

## EXPLOSIVES.

An act to protect life and property against the careless and malicious use or handling of dynamite and other explosives.

[Approved March 12, 1887. Stats. 1887, p. 110.]

Section 1. It is the duty of each and every person, contractor, firm, association, joint stock company, and corporation, manufacturing, storing, selling, transferring, disposing of, or in any manner dealing in, or with, or using, or giving out nitro-glycerine, dynamite, vigorite, hereules powder, giant powder, or other high explosive, by whatever name known, to keep at all times an accurate journal, or book of record, in which must be entered, from time to time, as they are made, each and every sale, delivery, transfer, gift, or other disposition made by such person, firm, association, joint stock company, or corporation, in the course of business or otherwise, of any quantity of such explosive substance.

Sec. 2. Such journal, or record book, must show, in a legible handwriting, to be entered therein at the time, a complete history of each transaction, stating the name and quantity of the explosive sold, delivered, given away, transferred, or otherwise disposed of; the name, place of residence, or business of the purchaser or transferee; the name of the individual to whom delivered, with his or her address, with a description of such individual sufficient to provide for identification.

Sec. 3. Such journal or record-book must be kept by the person, firm, association, joint stock company, or corporation so selling, delivering, or otherwise disposing of such explosive substance, or substances, in his or their principal office or place of business, at all times subject to the inspection and examination of the peace officers or other police authorities of the state, county, city and county, or municipality where the same is situated, on proper demand made therefor, any failure or neglect to

keep such book, or to make the proper entries therein at the time of the transaction, as herein provided, or to exhibit the same to the peace officers or other police authorities on demand, shall be deemed a misdemeanor, and punished accordingly.

Sec. 4. In addition to such punishment, and as a cumulative penalty, such person, firm, association, joint stock company, or corporation so offending, shall forfeit, for each offense, the sum of two hundred and fifty dollars, to be recovered in any court of competent jurisdiction, by action at law. The party so instituting such actions shall not be entitled to dismiss the same without consent of the court before which the suit has been instituted. Nor shall any judgment recovered be settled, satisfied, or discharged, save by order of such court, after full payment into court, and all moneys so collected shall be paid to the parties bringing the suit.

Sec. 5. Any person who in the public street or any highway of any county, city and county, city, or town or city, or at, in, or near to any theater, hall, public or private school, or college, church, hotel, or other public building, or at, in, or near to any private habitation, or in, on board of, or near any railway passenger train, or car or train, or cable road, or car of the same, or steam or other vessel, engaged in carrying passengers, or ferry-boat, or other public place, where human beings ordinarily pass and repass, shall recklessly or maliciously have in his or her possession any dynamite, nitro-glycerine, vigorite, hercules powder, giant powder, or other high explosive; or who shall recklessly or maliciously, by use of such means intimidate, terrify, or endanger any human being, is guilty of a felony, and on conviction shall be punished accordingly.

Sec. 6. Any person not regularly engaged in the manufacture, sale, transportation, or legitimate use in blasting operations, or in the arts, of such substances as are named in this act, shall be presumed (*prima facie*) to

be guilty of a reckless and malicious possession thereof, within the meaning of the foregoing section, if any such substance is found upon him, or in his possession, in any of the places or under any of the circumstances specified in the preceding section.

Sec. 7. No person may knowingly keep or have in his or her possession any dynamite, vigorite, nitro-glycerine, giant powder, hercules powder, or other high explosive, except in the regular course of business carried on by such person, either as a manufacturer thereof, or merchant dealing in the same, or for use in legitimate blasting operations, or in the arts, or while engaged in transporting the same for others, or as the agent or employee of others engaged in the course of such business or operations. Any other possession of any such explosive substances as are named in this act is unlawful; and the person so unlawfully possessing it shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Sec. 8. Any person who maliciously deposits or explodes, or who attempts to explode, at, in, under, or near any building, vessel, or boat, railroad, tramroad, or cable road, or any train, or car, or any depot, stable, carhouse, theater, school-house, church, dwelling-house, or other place where human beings usually inhabit, assemble, frequent, or pass and repass, any dynamite, nitro-glycerine, vigorite, giant or hercules powder, gunpowder, or other chemical compound, or other explosive, with the intent to injure or destroy such building, vessel, boat, or other structure, or with the intent to injure, intimidate, or terrify any human being, or by means of which any human being is injured or endangered, is guilty of a felony, and on conviction thereof, shall be punished by imprisonment in the state prison not less than one year.

Sec. 9. Any person, firm, or corporation, who shall take, carry, or transport, or cause to be taken, carried, or trans-

ported, any dynamite, **vigorite**, nitro-glycerine, hercules or giant powder, or other high explosive, into the limits of, or through, or across any incorporated city or town of this state, or into, through or across any harbor for shipping, in any manner, condition, or quantity, or otherwise, in violation of the laws or ordinances of such city or town, or of the laws or regulations governing such harbor, shall, in addition to the penalties provided or imposed by such laws, ordinances, or regulations, forfeit to the state of California all such explosive substances, as well as the cases inclosing the same. Such forfeiture may be sued for by any citizen of the state, for himself and the state; and the goods or property, when so forfeited and recovered by judgment of the court, shall be sold, and the proceeds divided, the citizen so suing taking one-half to himself for his own benefit, and paying the other half into the state treasury. Such action may be maintained in any court of competent jurisdiction; provided, that the state shall never be liable to any cost or expense for any such suit or proceeding.

Sec. 10. Any of the forfeitures provided for in this act may be taken advantage of, and sued for, and recovered, by any peace officer or policeman, member of the police force of any city, city and county, or town where the same arises, for his own benefit, notwithstanding any law, ordinance, or rule, to the contrary.

Sec. 11. This act shall take effect and be in force from and after its passage.

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### FENCES AND INCLOSURES.

An act to prevent persons passing through inclosures and leaving them open, and tearing down fences to make passage through inclosures.

[Approved March 16, 1872. Stats. 1871-2, 384.]

Section 1. Any person passing through an inclosure of another and leaving the same open, is guilty of a misde-

meanor, and punishable by a fine not less than twenty dollars nor more than fifty dollars.

Sec. 2. Any person willfully or maliciously tearing down fences to make a passage through an inclosure, is guilty of a misdemeanor, and punishable by a fine not less than fifty dollars nor more than five hundred dollars.

Sec. 3. All fines collected under the provisions of this act shall be paid into the county school fund of the county where the offense is committed.

Sec. 4. This act shall take effect immediately.

(See next act.)

An act to prevent the leaving open of inclosures, and hunting on inclosed lands.

[Approved March 23, 1876. Stats. 1875-6, 408; and Stats. 1877-8, 49; 1877-8, 776.]

Section 1. Every person who shall open any gate, bars, or fence of another, for the purpose of passing through, and shall willfully leave the same open, without the permission of the owner, is guilty of a misdemeanor.

Sec. 2. Every person who willfully opens, tears down, or otherwise destroys any fence on the inclosed land of another, is guilty of a misdemeanor.

Sec. 3. Every person who willfully enters upon the inclosed land of another for the purpose of hunting, or who discharges firearms, or lights camp-fires thereon without first having obtained permission of the owner or occupant of said land, is guilty of a misdemeanor.

Sec. 4. Every person who willfully, carelessly, or negligently, while hunting or camping upon the inclosed land of another, kills, maims, or wounds an animal, the property of another, is guilty of a misdemeanor.

Sec. 5. Every person who, upon departing from camp, willfully leaves the fire or fires burning or unextinguished, is guilty of a misdemeanor.

Sec. 6. Every person found guilty of any of the mis-

demeanors herein mentioned shall be fined not less than twenty, nor more than fifty dollars, and shall be imprisoned in the county jail until such fine be satisfied, not exceeding one day for every two dollars thereof.

Sec. 7. All acts and parts of acts in conflict herewith are repealed; provided, however, nothing herein contained shall be construed as repealing section five hundred and ninety-four of the Penal Code.

Sec. 8. Section three of this act shall not apply to the counties of Los Angeles, San Diego, Sutter, San Benito, Del Norte, El Dorado, Colusa, Yuba, Humboldt, Amador, Tuolumne, Shasta, Plumas, Lassen, Siskiyou, Modoc, Trinity, Sierra, Placer and Santa Cruz. [Amendment approved March 30, 1878; Stats. 1877-8, 776.]

This section was also amended by the Stats. 1877-8, 49. That amendment read as follows: Section three of this act shall not apply to the counties of Los Angeles, San Diego, Sutter, Del Norte, El Dorado, Colusa, Yuba, Humboldt, Amador, Tuolumne, San Luis Obispo, Plumas, Lassen, Siskiyou, Modoc, Shasta, Trinity, Sierra and Placer.

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## FIRES.

An act to prevent the destruction of forests by fire on public lands.

[Approved February 13, 1872. Stats. 1871-2, 96.]

Section 1. Any person or persons who shall willfully and deliberately set fire to any wooded country or forest belonging to this state or the United States, within this state, or to any place from which fire shall be communicated to any such wooded country or forest, or who shall accidentally set fire to any such wooded country or forest, or to any place from which fire shall be communicated to any such wooded country or forest, and shall not extinguish the same, or use every effort to that end, or who shall build any fire, for lawful purpose or otherwise, in or near any such wooded



country, or forest, and through carelessness or neglect shall permit said fire to extend to and burn through such wooded country or forest, shall be deemed guilty of a misdemeanor, and on conviction before a court of competent jurisdiction, shall be punishable by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment; provided, that nothing herein contained shall apply to any person who in good faith shall set a back fire to prevent the extension of a fire already burning. All fines collected under this act shall be paid into the county treasury for the benefit of the common school fund of the county in which they are collected.

An act to prevent destruction by fire of property of contiguous owners.

[Approved March 31, 1891. Stats. 1891, p. 473.]

Section 1. Every person who starts a fire in hay, grain, stubble, or grass, without first carefully providing, by plowing or otherwise, for the keeping of said fire within and upon the premises upon which it is started or set out, and by reason of the non-providing of such barrier any property of an adjoining or contiguous resident or owner is injured, damaged, or destroyed, is guilty of a misdemeanor.

Sec. 2. This act shall take effect and be in force from and after its passage.

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## FISH.

An act to authorize the board of fish commissioners of this state to purchase the land on which the state fish hatcheries at Sisson are now situated, and appropriating money therefor.

[Approved March 31, 1891. Stats. 1891, p. 258.]

Section 1. The board of fish commissioners of this state are hereby authorized and empowered to purchase, out of the fund for the support and maintenance of the state

hatcheries, the land on which the state fish hatcheries at Sisson are now situated, at a sum not to exceed five hundred dollars.

Sec. 2. The sum of five hundred dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the purpose mentioned in the preceding section.

Sec. 3. This act shall take effect from and after its passage.

An act concerning the payment of the expenses and costs of the trial of persons charged with the violation of the laws for the preservation of fish in the navigable waters of this state.

[Approved February 28, 1887; 1887, 5. Amended 1903, 20.]

The title of this act was amended by Stats. of 1903, p. 20, so as to read as follows:

An act providing for the payment of the costs and expenses of all trials and proceedings against any person charged with the violation of the laws of this state for the preservation, protection, or restoration of fish.

The original act of 1887 was entirely amended in 1903, as follows:

Section 1. The costs and expenses of all trials and proceedings which shall hereafter be had in any county of this state against any person charged with having violated any of the provisions of any law of this state for the preservation, protection, or restoration of fish, shall be borne and paid by the state. [Amendment, 1903, 20.]

Sec. 2. Any claim against the state for the cost and expenses named in this act shall be presented to the state board of fish commissioners, duly verified, and after approval and allowance by said board, shall be acted upon by the state board of examiners, and paid out of the fish commission fund. [Amendment, 1903, 20.]

Sec. 4. All acts and parts of acts in conflict with this act are hereby repealed. [Amendment, 1903, 20.]

Sec. 5. This act shall take effect immediately. [Amendment, 1903, 20.]

An act relating to fishing in the waters of this state.

[Approved and in effect April 23, 1880. Stats. 1880, p. 123, Ban. ed. 388.]

Section 1. All aliens incapable of becoming electors of this state are hereby prohibited from fishing, or taking any fish, lobster, shrimps, or shell fish of any kind, for the purpose of selling, or giving to another person to sell. Every violation of the provisions of this act shall be a misdemeanor, punishable upon conviction by a fine of not less than twenty-five dollars, or by imprisonment in the county jail for a period of not less than thirty days.

This act was held unconstitutional: *In re Ah Chong*, 5 Pac. C. L. J. 451.

An act to provide for the construction, maintenance and regulation of fishways in streams naturally frequented by salmon, shad, and other migratory fish.

[Approved April 16, 1880; Stats. 1880, 121; Ban. ed. 387.]

Section 1. It shall be the duty of the state board of fish commissioners to examine, from time to time, all dams and artificial obstructions in all rivers or streams in this state, naturally frequented by salmon, shad, or other migratory fish, and if, in their opinion, there is not free passage for fish over or around any dam or artificial obstruction, to notify the owners or occupants thereof to provide the same within a specified time with a durable and efficient fishway of such form and capacity and in such location as shall be determined by the fish commissioners, or person authorized by them. If such fishway is not completed to the satisfaction of said commissioners within the time specified, the owners or occupants of such

dam or artificial obstruction shall be deemed guilty of a misdemeanor, and may be prosecuted by action on complaint before any justice's court or justice of the peace in the county where such dam or artificial obstruction is situated, and, on conviction, shall be fined two hundred and fifty dollars and the plaintiff shall recover full costs; and one-half of such fine shall be for the benefit of and shall be paid to the person making the complaint, and the other half shall be paid into the state treasury for the benefit of the fund for "preservation and restoration of fish," and may be expended by the state board of fish commissioners, in their discretion, for the construction and maintenance of fishways.

Sec. 2. It shall be incumbent upon the owners or occupants of all dams or artificial obstructions, where the state board of fish commissioners require such fishways to be provided, to keep the same in repair, and open, and free from obstructions to the passage of fish at all times; and any owners or occupants of any such dam or artificial obstruction who neglect or refuse to keep such fishway in repair, and open, and free from obstruction to the passage of fish, shall be guilty of a misdemeanor, and subject to the same fine, and which shall be recovered in the same manner, and applied to the same purposes, as provided in section one of this act.

Sec. 3. Any person who shall willfully or knowingly destroy, injure or obstruct any such fishway, or any person who shall at any time take or catch any salmon, shad, or other migratory fish or trout, except by hook and line, within three hundred feet of any fishway required by the state board of fish commissioners to be provided and kept open, or shall take or catch any such fish in any manner, within fifty feet of such fish way, shall be guilty of a misdemeanor, and subject to the same fine, and which shall be recovered in the same manner and applied to the same purposes as provided in section one of this act.

An act to prevent the catching of fish by seines, nets, or weirs, in the San Antonio Creek in the county of Alameda.

[Approved March 20, 1876; 1875-6, 362.]

Use of seines and nets unlawful.

Section 1. It shall not be lawful for any person to catch fish in the waters of the San Antonio Creek, in the county of Alameda, by the use of seines, nets, or weirs. Penalty for violation.

Sec. 2. Any person violating the provisions of this act shall be subject to a penalty of not less than fifty, nor more than one hundred dollars for each offense, or imprisonment in the county jail of the county of Alameda for a term of not less than thirty nor more than sixty days, which penalty may be enforced by any police judge or justice of the peace of said county.

Sec. 3. This act shall take effect and be in force from and after its passage.

An act to prohibit the destruction of fish in Alameda County.

[Approved March 28, 1878; 1877-8, 598.]

Catching fish in Lake Chabot.

Section 1. It shall not be lawful for any person to catch, take, or destroy any fish of any kind in the body of water known as Lake Chabot, in the San Leandro Creek, in Alameda County, belonging to the Contra Costa Water Company, without permission of the owner or owners thereof.

Catching fish in San Leandro Creek.

Sec. 2. It shall not be lawful to take, kill, or destroy any brook or speckled trout, salmon, or salmon trout, or any other species of fish in San Leandro Creek and its branches or tributaries, or in any of the streams or water-courses of said county, between the first day of October of each year and the first day of April of the following year.

### Misdemeanor.

Sec. 3. Any person violating the provisions of this act shall be guilty of a misdemeanor.

Sec. 4. This act shall take effect and be in force from and after its passage.

An act to prevent the destruction of fish in Kings River.

[Approved March 28, 1878. Stats. 1877-8, 601.]

Passage of fish through ditches prevented, how.

Section 1. The proprietors of all water-ditches and flumes drawing their supply from the waters of Kings River shall place and keep in good repair at the heads of their respective ditches or flumes through which all the water from the river entering the ditch or flume shall pass, strips of wood or other material, the meshes between which shall not exceed one inch in width, for the prevention of the passage of fish from the river into the flumes or ditches. Any person taking water from Kings River in violation of the provisions of this act is guilty of a misdemeanor.

An act for the preservation of fish in the waters of Lake Bigler.

[Approved March 30, 1878. Stats. 1877-8, 746.]

Catching fish, except by hook and line, in Lake Bigler.

Section 1. It shall not be lawful for any person or persons to catch or kill any fish in the waters of Lake Bigler, or in any stream leading into or from said Lake Bigler, with any seine, gill-net, spear, wire fence, basket, trap-set net, or dam, or any poisonous, deleterious, or stupefying drug, or explosive compound, or any other implement or appliance, except by means of a hook and line.

Penalty.

Sec. 2. Any person or persons who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace, in Placer County, El Dorado County, or

Nevada County, shall be punished by a fine of not less than one hundred dollars nor more than five hundred, or by imprisonment in the county jail not less than thirty days nor more than four months, or by both such fine and imprisonment, in the discretion of the court, for each and every offense, besides the cost of prosecution.

Fines, how paid.

Sec. 3. The district attorney, or his deputy, of El Dorado County, or of Placer County, or of Nevada County, whichever the informer may notify as within the district attorney's jurisdiction, shall prosecute such suits, and upon conviction all fines, damages, and penalties that may be awarded or collected under this act shall be paid one-half to the district attorney and one-half to the informer, share and share alike; and it is hereby made the duty of the district attorney, or his appointed deputy of the counties of Placer, El Dorado, and Nevada, to prosecute all cases arising under this act.

Sec. 4. All acts, and provisions of any act or parts of acts conflicting with this act, are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its passage.

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### FLAG.

[Act to prohibit desecration of: Stats. 1899, p. 46.]

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### GAME LAWS.

Fish: See ante, title Fish.

Act to prevent hunting on inclosed lands: See ante, title Fences.

An act for the protection of game in Nevada County.

[Approved February 6, 1874; 1873-4, 80.]

The code commissioners say of this act: "Probably modified and repealed by Penal Code, secs. 626c, 626f, 626h, and 626i."

An act to prevent the destruction of deer on Monte Diablo,  
in Contra Costa County.

[Approved March 28, 1878; 1877-8, 599.]

Hunting or killing deed at Monte Diablo—Misdemeanor.

Section 1. Every person who shall hunt, pursue, kill, or destroy any male or female deer or fawn within three miles of the summit of Monte Diablo, in Contra Costa County, for the period of four years from the date of the passage of this act, is guilty of a misdemeanor.

Sec. 2. This act shall take effect immediately.

An act to prevent the capture and destruction of blue cranes  
in this state.

[Approved March 16, 1899. Stats. 1899, 205.]

Section 1. Any person or persons who shall willfully and knowingly shoot, wound, trap, snare, or in any other manner catch or capture any blue crane in the state of California, or shall knowingly take, injure, or destroy the nest of any white or blue crane, or shall take, injure, or destroy any blue crane's eggs, in the nest or otherwise, in said state, shall be deemed guilty of a misdemeanor, and upon conviction thereof, before any justice of the peace of the township in which the offense shall have been committed, shall be fined in a sum not less than fifty dollars nor exceeding one hundred dollars, and cost of the action for each offense, or may be imprisoned not less than fifty days nor more than one hundred days, or by such fine and imprisonment as the judgment of the court may direct.

Sec. 2. Of all fines collected under the provisions of this act one-half shall be paid to the informer or informers, and one-half shall be paid into the county treasury for the benefit of the common school fund.

Sec. 3. This act shall take effect and be in force from and after its passage.



An act to protect sea-gulls in the neighborhood of Santa Monica.

[Approved March 15, 1876; 1875-6, 287.]

Misdemeanor.

Section 1. Every person who willfully kills or destroys any of that species of sea birds known as gulls, within five miles of the town of Santa Monica, in Los Angeles County, is guilty of a misdemeanor.

Sec. 2. This act shall take effect and be in force from and after its passage.

An act to prevent the capture and destruction of mocking-birds in this state.

[In effect February 14, 1872. Stats. 1871-2, 102.]

Section 1. Any person or persons who shall willfully and knowingly shoot, wound, trap, snare, or in any other manner catch or capture any mocking-bird in the state of California, or shall knowingly take, injure, or destroy the nest of any mocking-bird, or shall take, injure, or destroy any mocking bird's eggs, in the nest or otherwise, in said state, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the township in which the offense shall have been committed, shall be fined in a sum not less than five dollars nor exceeding ten dollars, and cost of the action for each offense, or may be imprisoned not less than five days nor more than ten days, or by both such fine and imprisonment, as the judgment of the court may direct.

Sec. 2. All fines collected under the provisions of this act shall be paid into the county treasury for the benefit of the common school fund.

## GAS.

An act to regulate the use of illuminating gas.

[Approved March 20, 1903. Stats. 1903, 289.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. Every hotel-keeper, lodging-house keeper, and inn-keeper, or keeper of any place where rooms are let to lodgers in which, or any of which such places illuminating gas is used, who shall turn off, or cause to be turned off at the meter the flow of such illuminating gas, during the time of the use of any such room or rooms, shall be guilty of a misdemeanor; provided, however, that this act shall not apply to any of the persons herein enumerated, when such person or persons shall have connected every exit orifice upon the gas fixtures used in such place or places with a practical and safe automatic gas igniter.

Sec. 2. This act shall take effect and be in force immediately from and after its passage.

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GOVERNOR.

An act imposing certain duties upon the governor of the State.

Section 1. The governor shall offer a standing reward of three hundred dollars (\$300) for the arrest of each person engaged in the robbery of, or in an attempt to rob any person or persons upon, or having in charge, in whole or in part, any stage coach, wagon, railroad train, or other conveyance engaged at the time in carrying passengers, or any private conveyance within this state; the reward to be paid to the person or persons making the arrest, immediately upon the conviction of the person or persons so arrested; but no reward shall be paid except after such conviction. [In effect April 3, 1876; Stats. 1875-6, p. 855.]

## GRAND ARMY.

An act entitled an act to prevent persons from unlawfully using or wearing the badge of the Grand Army of the Republic of this state.

[Approved March 10, 1887. Stats. 1887, 82.]

Section 1. Any person who shall willfully wear the badge of the Grand Army of the Republic, or who shall use or wear the same to obtain aid or assistance thereby within this state, unless he shall be entitled to use or wear the same under the rules and regulations of the Department of California, Grand Army of the Republic, shall be guilty of misdemeanor, and upon conviction shall be punished by imprisonment for a term not to exceed thirty (30) days in the county jail, or a fine not to exceed twenty (20) dollars, or by both such fine or imprisonment.

Sec. 2. This act shall take effect and be in force from and after the date of its passage.

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## GROWING TREES.

An act to protect the groves of big trees in the counties of Fresno, Tulare, and Kern.

[Approved March 13, 1874. Stats. 1873-4, 347.]

Misdemeanor.

Section 1. Any person or persons who shall willfully cut down or strip of its bark, any tree "over sixteen feet in diameter," in the grove of big trees situated in the counties of Fresno, Tulare, or Kern, or shall destroy any of said trees, by fire, shall be guilty of a misdemeanor, and shall, on conviction thereof before any justice of the peace in said counties, be fined not less than (\$50) fifty dollars nor more than (\$300) three hundred dollars, or imprisonment in the county jail not less than (25) twenty-five days

nor more than (150) one hundred and fifty days, or both fine and imprisonment, as the court may determine.

Disposition of fines.

Sec. 2. Upon the arrest and conviction of any person or persons guilty of any of the acts before mentioned, the party informing shall be entitled to one-half of the fines collected.

Sec. 3. This act shall take effect and be in force from and after its passage.

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### HOUSE OF CORRECTION.

An act to provide for the commitment of persons convicted of crime to the house of correction.

[Approved March 9, 1885; 1885, 34.]

The code commissioners say this act was superseded by Stats. 1889, 111, ch. 108; Stats. 1889, 100, ch. 103.

An act in relation to the house of correction of the city and county of San Francisco.

[Stats. 1877-8, 953; repealed 1893, 5.]

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### INFANCY.

Act to prevent sale of liquors to minors: See post, title Intoxicating Liquors.

An act for the incorporation of societies for the prevention of cruelty to children.

[Approved April 3, 1876. Stats. 1875-6, 830.]

Section 1. Any five or more persons of full age, a majority of whom shall be citizens and residents within the state, who shall desire to associate themselves together for the purpose of preventing cruelty to children, may make, sign, and acknowledge, before any person authorized to take acknowledgments of deeds of this state, and file in

the office of the secretary of state, and also in the office of the clerk of the county in which the business of the society is to be conducted, a certificate in writing, in which shall be stated the name or title by which said society shall be known in law, the particular business and objects of such society, the number of trustees, directors, or managers, to manage the same, and the names of the trustees, directors, or managers of the society for the first year of its existence; but such certificate shall not be filed unless the written consent and approbation of the district judge of the district in which the place of business or principal office of such society shall be located, be indorsed on such certificate.

Sec. 2. Upon filing the certificate as aforesaid, the persons who shall have signed and acknowledged such certificate, and their associates and successors, shall thereupon, by virtue of this act, be a body politic and corporate by its name stated in such certificate, and as such shall have power:

First—To have perpetual succession by its corporate name.

Second—To sue and be sued, complain and defend, in any court of law or equity.

Third—To make and use a common seal, which may be affixed by making an impression directly in the paper, and alter the same at pleasure.

Fourth—To appoint such officers, managers, and agents, as the business of the corporation may require.

Fifth—To make by-laws, not inconsistent with the laws of this state or of the United States, for the management of its property and the regulation of its affairs.

Sixth—To contract and be contracted with.

Seventh—To take and hold by gift, purchase, grant, devise, or bequest, any property, real or personal, and the same to dispose of at pleasure. But such a corporation shall not, in its corporate capacity, hold real estate the

yearly income derived from which shall exceed the sum of fifty thousand dollars.

Eighth—To exercise any corporate powers necessary for the exercise of the powers above enumerated and given.

Sec. 3. Any society so incorporated may prefer a complaint before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting children, and may aid in bringing the fact before such court or magistrate in any proceeding taken.

Sec. 4. All magistrates, constables, sheriffs, and officers of police shall, as occasion may require, aid the society so incorporated, its officers, members, and agents, in the enforcement of all laws which now are or may hereafter be enacted relating to or affecting children.

Sec. 5. The provisions of this act shall not extend or apply to any association or individuals who shall, in the certificate filed as hereinabove provided, use or specify a name or style the same, or substantially the same, as that of any previously existing incorporated society in this state.

Fines to be paid to society: See next act, sec. 5.

An act relating to children.

[Approved March 30, 1878. Stats. 1877-8, 813.]

Persons selling or apprenticing children for immoral purpose.

Section 1. Any person, whether as parent, relative, guardian, employer, or otherwise, having the care, custody or control of any child under the age of sixteen years, who shall exhibit, use, or employ, or who shall in any manner or under any pretense sell, apprentice, give away, let out, or otherwise dispose of any such child to any person, under any name, title or pretense in or for the vocation, occupation, service, or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging, or peddling, or as a gymnast, acrobat, contor-

tionist, or rider, in any place whatsoever, or for or in any obscene, indecent, or immoral purpose, exhibition, or practice whatsoever, or for or in any mendicant or wandering business whatsoever, or for or in any business, exhibition, or vocation injurious to health or dangerous to the life or limb of such child; or who shall cause, procure, or encourage any such child to engage therein—shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment; provided, that nothing in this section contained shall apply to or affect the employment or use of any such child as a singer or musician in any church, school, or academy, or the teaching or learning of the science or practice of music; or the employment of any such child as a musician at any concert or other musical entertainment, on the written consent of the mayor of the city or president of the board of trustees of the town where such concert or entertainment shall take place.

Offense, how punished.

Sec. 2. Every person who shall take, receive, hire, employ, use, exhibit, or have in custody any child under the age and for any of the purposes mentioned in the preceding section, shall be guilty of a like offense, and punished by a like punishment as therein provided.

Court to commit child to asylum.

Sec. 3. When, upon examination before any court or magistrate, it shall appear that any child, within the age previously mentioned in this act, was engaged or used for or in any business, or exhibition, or vocation, or purpose designated, and as mentioned in this act, and when upon the conviction of any person having the custody of a child of a criminal assault upon it, the court or magistrate before whom such conviction is had shall deem it desirable for the welfare of such child that the person

so convicted should be deprived of its custody thereafter, such court or magistrate may commit such child to any orphan asylum, society for the prevention of cruelty to children, charitable or other institution, or make such other disposition thereof as now is or hereafter may be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children.

Causing child to suffer—Penalty for.

Sec. 4. Whoever shall willfully cause or permit any child to suffer or who shall inflict thereon unjustifiable physical pain or mental suffering, and whoever, having the care or custody of any child, shall willfully cause or permit the life or limb of such child to be endangered, or the health of such child to be injured, or any person who shall willfully cause or permit such child to be placed in such situation that its life or limb may be endangered, or its health shall be likely to be injured, shall be guilty of a misdemeanor.

Fines, how appropriated.

Sec. 5. All fines, penalties, and forfeitures imposed and collected in any county of this state, under the provisions of this and every act passed, or which may be passed, relating to or affecting children, in every case where the prosecution was instituted or conducted by a society incorporated pursuant to the provisions of chapter five hundred and forty-nine of the statutes of 1875-6, approved April third, eighteen hundred and seventy-six, being an act entitled "An act for the incorporation of societies for the prevention of cruelty to children," shall, except where otherwise provided, inure to such society in aid of the purposes for which it was incorporated.

Sec. 6. This act shall take effect immediately.



An act for the protection of children, and to prevent and punish certain wrongs to children.

[Approved March 30, 1878. Stats. 1877-8, 812.]

Minor not to enter saloon—Penalty.

Section 1. No minor, under the age of sixteen years, shall be admitted at any time to, or permitted to remain in, any saloon or place of entertainment where any spirituous liquors, or wines, or intoxicating or malt liquors are sold, exchanged, or given away, or at places of amusement known as dance-houses and concert saloons, unless accompanied by parent or guardian. Any proprietor, keeper, or manager of any such place who shall admit such minor to, or permit him or her to remain in any such place, unless accompanied by parent or guardian, shall be guilty of a misdemeanor.

Begging restrained—Penalty for violation.

Sec. 2. Every person having the care, custody, or control of any child under the age of sixteen years shall restrain such child from begging, whether actually begging or under the pretext of peddling. Any person offending against this section shall be arrested and brought before a court or magistrate, and for the first offense shall be reprimanded, and for each subsequent offense shall be guilty of a misdemeanor.

Penalty for begging.

Sec. 3. Any child, apparently under the age of sixteen years, that comes within any of the following descriptions named:

(a) That is found begging, or receiving or gathering alms (whether actually begging, or under the pretext of selling or offering for sale anything), or being in any street, road, or public place for the purpose of so begging, gathering, or receiving alms.

(b) That is found wandering and not having any house or settled place of abode, or proper guardianship, or visible means of subsistence.

(c) That is found destitute, either being an orphan, or having a vicious parent who is undergoing penal servitude or imprisonment.

(d) That frequents the company of reputed thieves or prostitutes, or houses of prostitution or assignation, or dance-houses, concert-saloons, theaters, and varieties, or places specified in the first section of this act, without parent or guardian, shall be arrested and brought before a court or magistrate.

—When, upon examination before a court or magistrate, it shall appear that any such child has been engaged in any of the aforesaid acts, or comes within any of the aforesaid descriptions, such court or magistrate, when it shall deem it expedient for the welfare of the child, may commit such child to an orphan asylum, society for the prevention of cruelty to children, charitable or other institution, or make such other disposition thereof as now is or may hereafter be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children. Child not to be confined.

Sec. 4. No child under restraint or conviction, apparently under the age of sixteen years, shall be placed in any prison or place of confinement, or in any courtroom, or in any vehicle for transportation to any place, in company with adults charged with or convicted of crime, except in the presence of a proper official.

Sec. 5. This act shall take effect immediately.

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### INTERPRETERS.

An act to authorize the appointment of an interpreter of the Italian language and dialects, in criminal proceedings, in cities and cities and counties of one hundred thousand inhabitants.

[Approved March 12, 1885. Stats. 1885, 108. Amended 1895, 37.]

Section 1. In all cities and cities and counties of over one hundred thousand inhabitants, where an interpreter

of the Italian language is necessary, it shall be the duty of the mayor and police judge of such city, or city and county, and of the judge of the superior court of said city and county, or of the county in which said city is situated, or where there are more judges than one, then it shall be the duty of the presiding judge of said superior court and the presiding judge of the police court and the mayor, to appoint an interpreter of the Italian language, who must be able to interpret the Italian language and dialects into the English language, to be employed in criminal proceedings when necessary in said cities, or cities and counties. [Amendment approved March 9, 1895; Stats. 1895, 37. In effect immediately.]

Sec. 2. The said interpreter shall receive a salary of fifteen hundred dollars per annum, which shall be paid out of the general fund of such city, or city and county.

Sec. 3. This act shall not repeal any act heretofore made and now in force for the appointment of interpreters, except so much of any act which may conflict with this act in the appointment of Italian interpreters.

This act is superseded as to San Francisco by chapter I of article V of the charter of that city.

· An act in relation to interpreters before grand juries.

[Approved and in effect March 23, 1872. Stats. 1871-2, 540.]

Section 1. The grand jury or district attorney may require by subpoena, the attendance of any person before the grand jury as interpreter, and the interpreter may be present at the examination of witnesses before the grand jury.

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## INTOXICATING LIQUORS.

An act to prevent the sale of intoxicating liquors to minor children.

[Approved March 11, 1891. Stats. 1891, 91.]

Section 1. Every person who sells or gives, or causes to be delivered, to any minor child, male or female, under

the age of eighteen years, any intoxicating drink in any quantity whatsoever, or who, as proprietor or manager of any saloon or public house where intoxicating liquors are sold, permits any such minor child under the age of eighteen years to visit said saloon or public house where intoxicating liquors are sold, for the purpose of gambling, playing cards, billiards, pool, or any game of chance, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than three hundred dollars, and in default of payment of said fine shall be imprisoned in the county jail for a period of not less than one hundred days.

Sec. 2. All acts in conflict with this act are hereby repealed.

Sec. 3. This act shall take effect immediately upon its passage.

See former act on this subject in Stats. 1871-2, 231.

See later act on this subject as follows:

An act to prevent the selling, giving or delivering intoxicating liquors to minor children, and to prevent minor children visiting saloons or public houses where intoxicating liquors are sold.

[Approved March 20, 1903. Stats. 1903, 458.]

The people of the state of California, represented in the senate and assembly, do enact as follows:

Section 1. Every person who sells, gives or delivers to any minor child, male or female, under the age of eighteen years, any intoxicating drink in any quantity whatsoever, or who, as proprietor or manager of any saloon or public house where intoxicating liquors are sold, permits any such minor child under the age of eighteen years, to visit said saloon or public house where intoxicating liquors are sold, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not more than three

hundred dollars, or by imprisonment in the county jail for a period not exceeding one hundred and fifty days, or by both such fine and imprisonment; provided, that this act shall not apply to the parents of such children or to guardians of their wards.

Sec. 2. All acts in conflict with this act are hereby repealed.

Sec. 3. This act shall take effect immediately upon its passage.

An act to prevent the sale of intoxicating liquors to persons addicted to the inordinate use of intoxicating liquors.

[Approved March 19, 1889. Stats. 1889, 352.]

Section 1. Any person who, after receiving notice that a person named in said notice is addicted to the inordinate use of intoxicating liquors, should the person named in said notice be so addicted, shall thereafter, within a period of twelve months, furnish to said person so addicted to the inordinate use of intoxicating liquors any spirituous liquors, wines, or intoxicating or malt liquors, shall be guilty of a misdemeanor, and punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding two hundred dollars, or by both such fine and imprisonment. Said notice shall be in writing, and may be given by any adult member of the family of said person so addicted to the inordinate use of intoxicating liquors, or by any adult relative of said person so addicted to the inordinate use of said intoxicating liquors.

Sec. 2. The provisions of this act shall not prohibit any regularly licensed physician from furnishing or prescribing said liquors in case of sickness.

Sec. 3. This act shall take effect from and after its passage.

An act to prevent the sale of intoxicating liquors in the immediate vicinity of soldiers' homes.

[Approved March 26, 1895. Stats. 1895, 161.]

Section 1. Every person who sells or gives away any ale, beer, wine, cider, or other intoxicating liquors, within one and one-half miles outside of the boundary line of the lands occupied by any home, retreat, or asylum for disabled volunteer soldiers, or soldiers and sailors, which has been or may hereafter be established by the government of the United States, within the state of California, is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, and in addition to such fine shall be imprisoned in the county jail thirty days; and upon the conviction of the owner or keeper thereof, the place wherein such intoxicating liquors shall have been sold or given away shall be, by order of the court wherein such conviction is made, within ten days thereafter, shut up and abated as a nuisance. And it is hereby made the duty of the district attorney of the county in which any such institution is or may be located to prosecute all offenders against the provisions of this act.

Sec. 2. This act shall take effect from and after its passage.

An act to prevent the sale of intoxicating beverages on election days.

[Approved and in effect March 7, 1874. Stats. 1873-4, 297.]

Section 1. It shall not be lawful for any person or persons keeping a public house, saloon, or drinking place, either licensed or unlicensed, to sell, give away, or furnish spirituous or malt liquors, wine, or any other intoxicating beverages, on any part of any day set apart, or to be set apart, for any general or special election by the citizens in any election district or precinct in any of the counties of the state where an election is in progress, during the

hours when by law, in said district or precinct, the election polls are required to be kept open.

Sec. 2. Any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor.

An act to prohibit the sale of intoxicating liquors in the state capitol building.

[Approved and in effect April 16, 1880. Stats. 1880, 80, Ban. ed. 273.]

Section 1. Any person or persons having in charge or control the state capitol building, and allowing the same, or any portion thereof, to be used for the sale or distribution in any manner, for profit, of any malt or spirituous liquors, shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than one thousand dollars.

An act to prohibit the sale of intoxicating liquors within two miles of the University of California.

[Approved December 23, 1873; 1873-4, 12.]

Superseded by Penal Code, sec. 172, as amended April 3, 1876.

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### JUVENILE COURT.

An act to amend an act entitled, "An act defining and providing for the control, protection and treatment of dependent and delinquent children; prescribing the powers and duties of courts with respect thereto; providing for the appointment of probation officers, and prescribing their duties and powers; providing for the separation of children from adults when confined in jails or other institutions; providing for the appointment of boards to investigate the qualifications of organizations receiving children under this act, and prescribing the duties of such boards; and providing when proceedings under this act shall be admissible in evidence." Approved February 26, 1903.

[Approved March 22, 1905. Stats. 1905, p. 806.]



Section 1. The title of said act is amended so as to read as follows: "An act defining and providing for the control, protection and treatment of dependent and delinquent children; defining such children; prescribing the powers and duties of courts in respect thereto; providing for the creation and appointment of probation officers, and prescribing their duties, powers, terms of office and compensation; providing for the commitment and confinement of such children; providing for the creation and appointment of boards, to be known as probation committees; to investigate the qualifications of organizations receiving children under this act; and prescribing the powers and duties of such boards, with respect to probation officers and otherwise, and prescribing the terms of office of the members of such boards; providing for the powers of courts and judges with respect to the appointment of probation officers and removal of same, and with respect to probation committees and members thereof; and providing when proceedings under this act shall be admissible in evidence."

Sec. 2. Section 1 of said act is hereby amended so as to read as follows:

Section 1. This act shall apply only to children under the age of sixteen years not now or hereafter inmates of a state institution. For the purposes of this act the words "dependent child" shall mean any child under the age of sixteen years who is found begging, or receiving or gathering alms (whether actually begging or under the pretext of selling or offering for sale anything), or being in any street, road, or public place for the purpose of so begging, gathering or receiving alms; or who is found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence; or who is found destitute, or whose home, by reason of neglect, cruelty or depravity on the part of either of its parents or of its guardian, or other person in whose care it may be, is an unfit place for such child; or who frequents the company of reputed criminals or prostitutes, or who is found living or being in any house of prostitution or assignation, or who habitually visits, without parent or guardian, any saloon, or place where any spirituous liquors or wine, or intoxicating or malt liquors are sold, exchanged, or given away, or who is incorrigible, or who is a persistent truant from school.



The words "delinquent child" shall include any child under the age of sixteen years who violates any law of this state, or any ordinance of any town, city, county, or city and county of this state.

Sec. 3. Section 2 of said act is hereby amended to read as follows:

Section 2. In counties having more than one judge of a superior court, the judges of such court may from time to time designate one or more of their number whose duty it shall be to hear all cases coming under this act. In counties of the first class, such designation shall be made by the presiding judge. The orders and findings, if any, of the superior court, in all cases coming under the provisions of this act, shall be entered in a book to be kept for that purpose and known as the "Juvenile Record," and the court acting under this act shall be called the "Juvenile Court." In justices' courts having more than one justice of the peace, and in police courts having more than one judge, the justices of the peace and the judges of the police courts, from time to time may designate one of their respective number whose duty it shall be to hear all cases coming under this act. All cases coming under the provisions of this act shall be heard at a special separate session of the court, and no matter other than cases under this act shall be on the calendar, or shall be heard at such session, nor shall there be permitted to be present at such session any person on trial, or awaiting trial, or under accusation of crime, who does not come under the provisions of this act.

Sec. 4. Section 3 of said act is hereby amended to read as follows:

Section 3. Any citizen of the state may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent child, and praying that the superior court deal with such child as provided in this act. Such petition shall be verified, and shall contain a statement of the facts constituting such dependency as provided in section one of this act. There shall be no fee for filing said petition.

Sec. 5. Section 4 of said act is hereby amended to read as follows:

Section 4. Upon the filing of the petition, provided for

in section three hereof, a citation shall issue, requiring the person having custody or control of the child, or with whom the child may be, to appear with the child at a place and time stated in the citation. Service of such citation must be made at least twenty-four hours before the time stated therein. The parents or guardian of the child, if residing in the county in which the court sits, and if their places of residence be known to the petitioner, or if there be neither parent nor guardian so residing, or if their places of residence be not known to petitioner, then some relative of the child, if there be any residing in said county, and if his residence and relationship to such child be known to petitioner, shall be notified of the proceedings by service of citation requiring them to appear at the time and place to be stated in such citation. In any case, the judge may appoint some suitable person to act in behalf of the child, and may order such further notice of the proceeding to be given as he may deem proper. If any person cited as herein provided, shall fail, without reasonable cause, to appear and abide by the order of the court, or to bring the child, if so required in the citation, such failure shall constitute a contempt of said court and may be punished as provided for in cases of contempt of court. In case any such citation cannot be served, or the party served fails to obey the same, and in any case in which it shall be made to appear to the court that such citation will be ineffectual, a warrant of arrest may issue on the order of the court, either against the parent or guardian, or the person having the custody of the child, or with whom the child may be, or against the child itself, or any of said persons; or if there be no person to be served with citation as above provided, a warrant of arrest may be issued against the child immediately. On the return of the citation or other process, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case in a summary manner. Until the final disposition of any case, the child may be retained in the possession of the person having charge of the same, or may be kept, upon the order of the court, in some suitable place, provided by the county, or city and county, or may be held otherwise, as the court may direct.

Sec. 6. Section 5 of said act is hereby amended to read as follows:

Section 5. When any child under the age of sixteen years shall be found by said court or judge or justice to be dependent, within the meaning of this act, the court may make an order committing the child, for such time during its minority as the court may deem fit, to the care of some reputable citizen of good moral character, or to the care of some association, society or corporation willing to receive it, embracing in its objects the purpose of caring for or obtaining homes for dependent or neglected children, or to the care of the probation officers or other person to remain in the home of the child. The court may thereafter set aside, change or modify such order.

Sec. 7. Section 6 of said act is hereby amended to read as follows:

Section 6. The judge of the superior court in and for each county or city and county of the state, or where there are more than one judge of said court, a majority of the judges thereof by an order entered in the minutes of such court, shall appoint seven discreet citizens of good moral character, and of either sex, to be known as probation committee, and shall fill all vacancies occurring in such committee. The clerk of said court shall immediately notify each person appointed on said committee and thereupon said persons shall appear before the judge of said juvenile court, if there be one, or otherwise before a judge of said superior court in said county and qualify by taking oath, to be entered in said juvenile record, if any, or in the minutes of said superior court, to faithfully perform the duties of a member of such probation committee.

Sec. 8. Section 7 of said act is hereby amended to read as follows:

Section 7. The members of such probation committees shall hold office for four years, and until their successors are appointed, provided, that of those first appointed, one shall hold office for one year, two for two years, two for three years, and two for four years, the terms for which the respective members first appointed shall hold office to be determined by lot as soon after their appointment as may be. When any vacancy occurs in any probation committee by expiration of the term of office of any member thereof, the successor shall be appointed to hold for the

term of four years; when any vacancy occurs for any other reason, the appointee shall hold for the unexpired term of his predecessor.

Sec. 9. Section 8 of said act is hereby amended to read as follows:

Section 8. The members of the probation committee shall serve without compensation.

Sec. 10. Section 9 of said act is hereby amended to read as follows:

Section 9. The superior court or any judge thereof may at any time require said probation committee or a probation officer to examine into the qualifications and management of any society, association or corporation, other than a state institution, applying to receive any child or children under this act, and to report to the court, provided that nothing in this section shall be construed as giving any probation committee or probation officer any power to enter any institution without the consent of such institution.

It shall be the duty of each probation committee prior to December first in each year to prepare a report in writing on the qualifications and management of all societies, associations and corporations, except state institutions, applying for or receiving any child under this act from the courts of their respective counties, and in said report said committee may make such suggestions or comments as to them may seem fit; said report to be filed in the office of the clerk of the court appointing such committee, for the information of the judges thereof.

Sec. 11. Section 10 of said act is hereby amended to read as follows:

Section 10. In counties of the first class there shall be one probation officer and not more than five deputy probation officers; in counties of the second class, one probation officer and not more than one deputy probation officer; in all other counties there shall be one probation officer.

In any county or city and county additional deputy probation officers may be appointed and their appointment approved or disapproved as hereinafter provided, from time to time when in the opinion of the court it may be necessary, provided that they serve without salary.

Sec. 12. Section 11 of said act is hereby amended to read as follows:

Section 11. The salaries of the probation officers and deputy probation officers (except as herein otherwise provided) shall be as follows, and shall be paid out of the county treasury of the county for which they are appointed, after being allowed and audited in the same manner as the salaries of other county officers:

In counties of the second class the probation officer shall receive \$125 per month, and the deputy probation officer seventy-five dollars per month. In all other counties, the probation officer and the deputy probation officers shall serve without compensation, provided, however, that the probation officer and deputy probation officers in all the counties of the state shall be allowed such necessary incidental expenses as may be authorized by a judge of the superior court; and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and the said expenses shall be paid out of the county treasury upon a warrant therefor issued by the said court.

Sec. 13. Section 12 of said act is hereby amended to read as follows:

Section 12. The offices of probation officer and deputy probation officer are hereby created. The appointments of probation officers and deputy probation officers to serve hereunder in any county or city and county shall be made by the probation committee of said county or city and county from discreet citizens of good moral character. The appointments by each probation committee shall be made in writing, signed by a majority of the members of such committee, and filed with the county clerk of such county, and shall be subject to and shall take effect upon approval by the judge of the superior court appointing such committee, or by a majority of the judges thereof if there be more than one; such approval to be by order entered in the minutes of said court. The term of office of probation officers and of deputy probation officers shall be two years from the date of the said approval of their several appointments, such probation officers and deputy probation officers may at any time be removed by the judge approving their appointment in his discretion.

Sec. 14. Section 13 of said act is hereby amended to read as follows:

Section 13. It shall be the duty of the clerk of any court before which a child is brought under the provisions

of this act, or if there be no clerk, then it shall be the duty of the judge or justice of said court, before the hearing of said matter, to notify the probation officer of the county thereof; except in cases where the child is brought before the court by a society, association or corporation which embraces within its objects the care of dependent or delinquent children and which has in the last report thereon by the probation committee of such county been favorably passed upon.

Sec. 15. A new section is hereby added to said act to be designated section 14, and to read as follows:

Section 14. The probation officer or deputy probation officer detailed by him for that purpose, shall inquire into the child's antecedents, character, history, family environment and cause of delinquency or dependency, and shall make his report in writing to the judge or justice in the case of every child to be dealt with under the provisions of this act as a dependent or delinquent child; but only when the judge so specially orders it in the case of a dependent child who is already in the charge of a society, association or corporation which embraces within its objects the care of dependent children and which has in the last report thereon by the probation committee of such county been favorably passed upon. In the event that such a society, association or corporation shall be so in charge, it shall through its agent or superintendent make such report to the judge in place of the probation officer.

It shall be the duty of said probation officer or said deputy probation officer or said agent or superintendent of such society, association or corporation to be present in court in order to represent the interests of the child when the case is heard, and to furnish to the court such information and assistance as it may require and to make the said report at such time, and to take such charge of the child before and after the hearing as may be ordered.

The probation officer and each deputy probation officer shall have as to any child committed to the care of such probation officer, the powers of a police officer. At any time in his discretion such officer or deputy may bring such child before the court committing such child to his care, for such further or other action as the court may see fit.

Any of the duties of the probation officer may be performed by a deputy probation officer, and shall be performed by him whenever detailed to perform the same by the probation officer; and it shall be the duty of the probation officer to see that the deputy probation officer performs his duties.

Sec. 16. A new section is hereby added to said act, to be designated as section 15, and to read as follows:

Section 15. If any child is arrested and taken before a justice of the peace or police judge, then at any time before the child is found delinquent and a commitment thereunder issues, it may be detained under order of the court in any detention home provided for that purpose by any county or city and county; or it may be otherwise provided for as the court sees fit in any manner provided herein for the care of a child after the finding of its delinquency. If, after a hearing, any child shall be found to be delinquent by such court, the justice of the peace or police judge may continue the further hearing from time to time, and may, at any time commit the child to the care and custody of a probation officer and may allow such to remain in the home of such child, subject to the visitation of a probation officer, and such child shall report to the probation officer as often as may be required and be subject to be returned to the court for further proceedings whenever such action may appear to be necessary or desirable. If the justice of the peace or police judge at any time deems it necessary or to the best interests of the child that he should be committed to a state reform school or to the care or custody of some association, society or corporation embracing in its objects the care of neglected, dependent, or delinquent children, or should be placed in a suitable family home, or that a guardian should be appointed for such child, the justice of the peace or police judge shall certify the case with a transcript of the docket or other record to the clerk of the superior court of the county or city and county in which the justices' court or police court is held, and the officer having the child in charge shall take the child before the superior court, and thereupon the superior court may proceed to hear and dispose of the case in the same manner as if the child had been brought before the court on petition as herein provided for dependent children. In such case the court shall



require notice to be given and investigation to be made as in other cases under this act, and may adjourn the hearing from time to time for that purpose.

Sec. 17. A new section is hereby added to said act, to be designated as section 16, and to read as follows:

Section 16. In the case of a child alleged to be delinquent, within the meaning of this act, and brought before the superior court at any time before the child is found delinquent and a commitment thereunder issues, it may be detained under order of the court in any detention home provided for that purpose by any county or city and county; or it may be otherwise provided for as the court sees fit in any manner provided herein for the care of a child after the finding of its delinquency. If the court find the child to be delinquent, said court may continue the hearing from time to time, and may at any time commit the child to the care or custody of the probation officer, and may allow such child to remain in the home of such child, subject to the visitation of a probation officer, and such child shall report to the probation officer as often as may be required, and be subject to be returned to the court for further proceedings whenever such action may appear necessary or desirable, or the court may commit the child to the care or custody of the probation officer; to be placed in a suitable family home, subject to the supervision of such probation officer and the further order of the court, or it may authorize the probation officer to board out the child in some suitable family home in case provision is made by voluntary contribution, or otherwise, for the payment of the board of such child, until a suitable provision may be made for the child in a home without such payment; or the court may commit the child for such time during its minority, as the court may deem fit, to the care and custody of some association, society or corporation that will receive it, embracing within its objects the care of dependent or delinquent children; or the court may commit such child to a state reform school, as is now, or may hereafter be provided by law in accordance with the procedure provided by law for such commitment. Provided, further, that should the legislative body of the county, or



city and county, or of a municipality, provide a suitable place for the detention of said dependent and delinquent children, which they are hereby authorized to do, such children may be committed thereto after the adjudication of dependency or delinquency for a definite period to be specified in such order. The court may thereafter set aside, change or modify such order, and may provide for a further detention in said place. Any order providing for the custody of a dependent or delinquent child may provide that the expense of maintenance of said child shall be paid by the parent or parents, or guardian, of said child, and in such case shall determine the amount so to be paid, and shall determine whether or not the parent or parents shall exercise any control over said child and the extent thereof; and any disobedience of such order or interference with the custody of the child as therein determined by a parent or guardian having notice of the proceedings or of the order shall constitute a contempt of court. The court may thereafter set aside, change or modify any order herein provided for.

Sec. 18. A new section is hereby added to said act, to be designated as section 17, and to read as follows:

Section 17. No court or magistrate shall commit a child under twelve years of age to jail, prison or police station, but if such child is unable to give bail, it may be committed to the care of the sheriff, police officer, constable or probation officer, who shall keep such child in some suitable place provided by the city, county, or city and county, outside of the enclosure of any jail or police station. When any child shall be sentenced to confinement in any institution to which adult convicts or prisoners are sentenced or where adults are confined, it shall be unlawful to confine such child in the same room or yard or enclosure with such adult convicts or prisoners, or to permit such child to come or remain within sight of or meet or come into or remain in the presence of any such adult convicts or prisoners.

Sec. 19. A new section is hereby added to said act, to be designated as section 18, and to read as follows:

Section 18. Nothing in this act shall be construed to repeal any portion of the act entitled "An act to establish a state reform school for juvenile offenders, and to make

an appropriation therefor," approved March 11, 1889, or any of the amendments thereto, or the act entitled "An act to establish the California Home for the Care and Training of Feeble-Minded Children, and provide for the maintenance of the same," approved March 18, 1885, or any of the amendments thereto, or the act entitled "An act to establish a school of industry, and to provide for the maintenance and management of the same and to make an appropriation therefor," approved March 11, 1889, or any of the amendments thereto; and in all commitments to said institutions, the acts in reference to said institutions shall govern the same.

Sec. 20. A new section is hereby added to said act, to be designated as section 19, and to read as follows:

Section 19. No record of or testimony concerning any proceedings against any child under this act shall be admissible as evidence against such child in any other court or proceeding, except in proceedings under this act, and except in guardianship or adoption proceedings relating to said child.

Sec. 21. A new section is hereby added to this act, to be designated as section 20, and to read as follows:

Section 20. This act shall be liberally construed, to the end that its purpose may be carried out, to wit—that the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can be properly done, the child be placed in an approved family, with people of the same religious belief, and become a member of the family by legal adoption, or otherwise. In this act, words used in any gender shall include all other genders, and the word "county" shall include "city and county."

Sec. 22. A new section is hereby added to this act, to be designated as section 21, and to read as follows:

Section 21. All acts and parts of acts inconsistent with this act are hereby repealed, except as hereinabove provided in section 19.

## LARCENY.

An act to more fully define the crime of larceny.

[Approved March 6, 1872. Stats. 1871-2, 282.]

Section 1. Every person who shall convert any manner of real estate, of the value of fifty dollars and upwards, into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of grand larceny, and upon conviction thereof, shall be punishable by imprisonment in the state prison for any term not less than one year nor more than fourteen years.

Sec. 2. Every person who shall convert any manner of real estate, of the value of under fifty dollars, into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of petit larceny, and, upon conviction thereof, shall be punishable by imprisonment in the county jail for a period not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

See Penal Code, sec. 495.

An act supplementary to an act entitled "An act concerning crimes and punishments," passed April sixteenth, eighteen hundred and fifty.

[Approved March 20, 1872. Stats. 1871-2, 435.]

Section 1. Every person who shall feloniously, steal, take, and carry away, or attempt to take, steal, and carry from any mining claim, tunnel, sluice, undercurrent, riffle box, or sulphurate machine, any gold dust, amalgam, or quicksilver, the property of another, shall be deemed guilty of grand larceny, and upon conviction thereof, shall be punished by imprisonment in the state prison for any

term of not less than one year nor more than fourteen years.

Remains in force: See *People v. Salvador*, 71 Cal. 16.

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### LODGING-HOUSES.

An act concerning lodging-houses and sleeping apartments.

[Approved April 3, 1876. Stats. 1875-6, 759.]

Section 1. Every person who owns, leases, lets, or hires, to any person or persons, any room or apartment in any building, house or other structure, within the limits of any incorporated city, or city and county, within the state of California, for the purpose of a lodging or sleeping apartment, which room or apartment contains less than five hundred cubic feet of space, in the clear, for each person so occupying such room or apartment, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than fifty (50) dollars or more than five hundred (500) dollars, or by imprisonment in the county jail, or by both such fine and imprisonment.

Sec. 2. Any person or persons found sleeping or lodging, or who hires or uses for the purpose of sleeping in, or lodging in, any room or apartment, which contains less than five hundred (500) cubic feet of space in the clear, for each person so occupying such room or apartment, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than ten (10) or more than fifty (50) dollars, or by both such fine and imprisonment.

Sec. 3. It shall be the duty of the chief of police (or such other person to whom the police powers of a city are delegated) to detail a competent and qualified officer or officers of the regular force to examine into any violation of any of the provisions of this act, and to arrest any person guilty of any such violation.

Sec. 4. The provisions of this act shall not be construed

to apply to hospitals, jails, prisons, insane asylums, or other public institutions.

Sec. 5. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

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## LUMBER MANUFACTURERS.

An act to protect lumber manufacturers.

[Approved and in effect February 9, 1876. Stats. 1875-6, 32.]

Section 1. Every person who maliciously drives into, or places within any saw-log, shingle-bolt, or other wood, any iron, steel, or other substance sufficiently hard to injure saws, knowing that the said saw-log, shingle-bolt, or other wood, is intended by the owner thereof to be manufactured into any kind of lumber, is guilty of a felony, and shall be punished by imprisonment in the state prison not less than one nor more than five years.

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## MANUFACTURED GOODS.

An act to prevent fraud and imposition in the matter of stamping and labeling produce and manufactured goods.

[Approved March 4, 1887. Stats. 1887, 17.]

Penalty for falsely labeling produce and manufactured goods.

Section 1. Any person, firm, or corporation, engaged in the production, manufacture, or sale of any article of merchandise made, or partly made, in this state, who or which shall by any imprint, label, trade-mark, tag, stamp, or other inscription or device, placed or impressed upon such article, or upon the cask, box, case, or package containing the same, misrepresent or falsely state the kind, character, or nature of the labor employed or used, or misrepresent or falsely state the extent of the labor em-

ployed or used, or misrepresent or falsely state the number or kind of persons exclusively employed or used, or misrepresent or falsely state that a particular or distinctive class or character of laborers was wholly and exclusively used or employed when, in fact, another class, or character, or distinction of laborers was used or employed, either jointly or in any wise supplementary to such exclusive class, character, or distinction of laborers, in the production or manufacture of the article to which such imprint, label, trade-mark, tag, stamp, or other inscription or device is affixed, to which, or upon the cask, box, case, or package containing the same, such imprint, label, trade-mark, tag, stamp, or other inscription or device is affixed, or upon which it is impressed, is guilty of a misdemeanor, and on conviction thereof is punishable by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than twenty days nor for more than ninety days, or by both such fine and imprisonment.

Sec. 2. This act shall take effect from and after its passage.

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### MASTER AND SERVANT.

An act to protect the wages of labor and the salaries and fees of subordinate officers.

[In effect April 1, 1872. Stats. 1871-2, 951.]

Section 1. Every person who employs laborers upon the public works, and who takes, keeps, or receives any part or portion of the wages due to such laborers from the state or municipal corporation for which such work is done, is guilty of a felony.

Sec. 2. Every officer of the state, or any county, city, or township therein, who keeps or retains any part or portion of the salary or fees allowed by law to his deputy, clerk, or subordinate officer is guilty of a felony.

An act to prevent misrepresentations of conditions of employment, making it a misdemeanor to misrepresent the same and providing penalties therefor.

[Approved March 20, 1903. Stats. 1903, 269.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. It shall be unlawful for any person, partnership, company, corporation, association, or organization of any kind, doing business in this state directly or through any agent or attorney, to induce, influence, persuade, or engage any person to change from one place to another in this state or to change from any place in any state, territory, or country to any place in this state, to work in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning the kind or character of such work, the compensation therefor, the sanitary conditions relating to or surrounding it, or the existence or non-existence of any strike, lockout, or other labor dispute affecting it and pending between the proposed employer or employers and the persons then or last theretofore engaged in the performance of the labor for which the employee is sought.

Sec. 2. Any violation of section one or section two hereof shall be deemed a misdemeanor, and shall be punished by a fine of not exceeding two thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

Sec. 3. This act shall take effect on the date of its passage.

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### OFFICERS.

Retention of part of salary of deputy by officer: See ante, title Master and Servant.

An act in relation to the intoxication of officers.

[In effect April 15, 1880. Stats. 1880, 77; Ban. ed. 265.]

Section 1. Any officer of a town, village, city, county, or

state, who shall be intoxicated while in discharge of the duties of his office, or by reason of intoxication is disqualified for the discharge of, or neglects his duties, shall be guilty of a misdemeanor, and on conviction of such misdemeanor shall forfeit his office; and in such case the vacancy occasioned thereby shall be filled in the same manner as if such officer had filed his resignation in the proper office, and it had been accepted by the proper authority; provided, such acceptance shall have been necessary to make the office vacant.

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### OLEOMARGARINE.

An act to prevent the sale or disposition, as butter, of the substance known as "oleomargarine," or "oleomargarine butter," and when "oleomargarine," or "oleomargarine butter," is sold or disposed of, requiring notice thereof to be given.

[Approved March 1, 1883. Stats. 1883, 20.]

Compare the act to prevent deception in manufacture and sale of butter: See ante, p. 574.

Every package must be branded.

Section 1. Every person or corporation who shall manufacture for sale, or who shall offer or expose for sale, any article or substance in semblance of butter, not the legitimate product of the dairy, and not made exclusively of milk or cream, or into which the oil or fat of animals, not produced from milk, enters as a component part, or into which the oil or fat of animals, not produced from milk, has been introduced to take the place of cream, shall distinctly stamp, brand, or mark in some conspicuous place upon every package of such article or substance the word "oleomargarine," in plain letters, not less than one-fourth of one inch square each; and in case of retail sale of such article or substance in parcels or otherwise, the seller shall, in all cases, deliver therewith to the purchaser a printed label, bearing the plainly printed word "oleomar-



garine," the said word to be printed with type each letter of which shall not be less than one-fourth of one inch square.

Printed notice to be posted.

Sec. 2. Every person dealing, whether by wholesale or retail, in the article or substance described in section one of this act, and every hotel or restaurant keeper, or boarding-house keeper, in whose hotel, or restaurant, or boarding-house such article or substance is used, shall continuously keep conspicuously posted up, in not less than three exposed positions in and about their respective places of business, a printed notice in the following words, viz.: "Oleomargarine sold here"; the said notice to be plainly printed, with letters not less than two inches square each. And each and every hotel keeper and restaurant keeper, boarding-house keeper, or proprietor of other places where meals are furnished for pay, who may use in their respective places of business any of the article or substance described in the first section of this act, shall, upon the furnishing of the same to his guests or customers, if inquiry is made, cause each and every guest or customer to be distinctly informed that the said article is not butter, the genuine production of the dairy, but is "oleomargarine."

Penalty for violation.

Sec. 3. Every person or director, trustee, officer, or agent of any corporation who may violate any provision of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five dollars, nor more than five hundred dollars, or by imprisonment for not more than three months, or by both such fine and imprisonment; and it shall be the duty of the court trying said offense to order the payment of one-half of the fine imposed to the person giving the information upon which the prosecution was based and the conviction had, and such fine may be collected by execution as in civil causes.

Sec. 4. All acts or parts of acts in conflict with this act are hereby repealed.

The former act on this point is as follows:

An act to prevent the sale of oleomargarine under the name of and under pretense that said commodity is butter.

[Approved March 26, 1878; 1877-8, 535.]

The code commissioners say of this act: "Probably repealed by 1883, 20. If not, it is superseded by 1895, 41, ch. 38, and 1897, 65, ch. 75."

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### OLIVE OIL.

An act to regulate the sale of imitation olive oil, and to repeal an act entitled "An act to regulate the sale of olive oil," approved March 10, 1891.

[Approved March 23, 1893. Stats. 1893, 210.]

Section 1. Section one of said act is hereby amended to read as follows:

Section 1. That for the purpose of this act every article, substance, or compound, or oil other than that extracted solely from the fruit of the olive tree, made in the semblance of olive oil extracted solely from the fruit of the olive tree, is hereby declared to be imitation olive oil.

Sec. 2. Each person who manufactures imitation olive oil shall place upon every bottle, can, or other vessel containing such imitation oil, a label, with the words "imitation olive oil" printed thereon in capital letters, in a clear and durable manner, in the English language, in plain type, designated and known as twenty-four-point letter type (two-line pica), of a Gothic face; said label shall also state plainly the name and address of the manufacturer or compounder, the name and place where manufactured and put up, and also the names and actual percentages of the different ingredients contained in each bottle, can, or vessel.

Sec. 3. No person, by himself or another, shall knowingly ship, consign, or forward by any common carrier, whether public or private, any imitation olive oil, unless the same be marked as provided in section two of this act, and no carrier shall knowingly receive, for the purpose of forwarding or transporting, any imitation olive oil, unless it shall be marked as hereinbefore provided, consigned, and by the carrier receipted for, as imitation olive oil; provided, that this act shall not apply to any goods in transit between foreign countries and across the state of California.

Sec. 4. No person shall knowingly have in his possession or under his control any imitation olive oil, unless the bottle, can, or vessel, or other package containing the same, be clearly marked as provided in section two of this act.

Sec. 5. No person, by himself or another, shall knowingly sell or offer for sale imitation olive oil under the name of or under the pretense that the same is pure olive oil; and no person, by himself or another, shall knowingly sell any imitation olive oil unless he shall inform the purchaser at the time of sale that the same is imitation olive oil, and shall deliver to the purchaser at the time of sale a statement, clearly printed in the English language, which shall refer to the article sold, and which shall contain, in plain type, designated and known as twenty-four-point letter type (two-line pica), of a Gothic face, in capital letters, the words "imitation olive oil," and shall give the name and place of business of the manufacturer or compounder.

Sec. 6. Every person having possession or control of any imitation olive oil, which is not marked as required by the provisions of this act, shall be presumed to have known; during the time of such possession or control, that the same was imitation olive oil.

Sec. 7. No person shall expose for sale any oil bearing the semblance of olive oil, manufactured out of the state, and represent that it is manufactured in this state, nor

shall offer for sale any such oil upon the receptacle of which is any cut, design, or mark intended to convey the belief that such is manufactured in this state.

Sec. 8. Whoever shall violate any of the provisions or sections of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both fine and imprisonment, as the court may direct.

Sec. 9. It shall be the duty of the state board of horticulture and the state analyst to enforce the provisions of this act.

Sec. 10. An act entitled "An act to regulate the sale of olive oil," approved March tenth, eighteen hundred and ninety-one, is hereby repealed.

The act repealed by this statute is as follows:

An act to regulate the sale of olive oil.

[Approved March 10, 1891. Stats. 1891, 46.]

Section 1. Every manufacturer or dealer in olive oil shall place upon every bottle or can filled with olive oil, and exposed or offered for sale as such, a label stating clearly the name and address of the manufacturer or dealer, and the place of manufacture, and shall file with the state board of horticulture a copy of said label, accompanied by an affidavit that it is pure, and that this act has been complied with.

Sec. 2. Whoever adulterates olive oil, sells or keeps for sale oil not olive oil, and exposed or offered for sale as olive oil, within the state of California, is guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of any township of legal jurisdiction, shall be fined in a sum not less than fifty dollars, nor exceeding one hundred dollars, and cost of the action, for each of-

fense, or may be imprisoned not less than fifty days nor more than one hundred days, or by such fine and imprisonment as the judgment of the court may direct.

Sec. 3. This act shall take effect and be in force from and after its passage.

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## POISONS.

See act relating to pharmacy, etc.: General Laws, title Pharmacy.

An act to regulate the sale of certain poisonous substances.

[Approved April 16, 1880. Stats. 1880, p. 102; Ban. ed. 341.]

Section 1. It shall be unlawful for any person to retail any of the substances poisonous, and by reason thereof dangerous to human life, without distinctly labeling the bottle, box, vessel, or package, and the wrapper or cover thereof in which such substance is contained, with the common or usual name thereof, together with the word "poison," and the name and place of business of the seller. Nor shall it be lawful for any person to retail any of the substances enumerated in either of said schedules to any person, unless, on true inquiry, it is found that the person receiving the same is aware of its poisonous character, and that it is to be used for a legitimate purpose.

Sec. 2. It shall be unlawful for any person to retail any of the substances enumerated herein, unless, before delivering the same, such person shall make, or cause to be made, in a book kept for that purpose only, an entry stating the date of the sale, the name and address of the purchaser, the name and quantity of the substance sold, the purpose for which it is stated by the purchaser to be required, and the name of the dispenser. The book required by this act shall be always open to inspection by the proper authorities. It shall also be the duty of the person dispensing any of the substances enumerated in either of said

schedules to ascertain, by due inquiry, whether the name and address given by the person receiving the same are his true name and address, and for that purpose may require such person to be identified.

Sec. 3. Any person who shall dispense any of the substances enumerated in either of said schedules without complying with the regulations herein prescribed, shall, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment; provided, that nothing in this act shall be so construed as to apply to the prescriptions of any physician authorized to practice medicine under the laws of this state.

Sec. 4. This act shall take effect and be in force from and after June first, eighteen hundred and eighty.

#### Schedule "A."

Arsenic, corrosive sublimate, hydrocyanic acid, cyanite of potassium, strychnia, essential oil of bitter almonds, opium, aconite, belladonna, conium, nux vomica, henbane, tansy, savin, ergot, cotton root, digitalis, chloroform, chloral hydrate, and all preparations, compounds, salts, extracts, or tinctures of such substances, except preparations of opium containing less than two grains to the fluid ounce.

#### Schedule 'B.'

White precipitate, red precipitate, red and green iodides of mercury, colchicum, cantharides, oxalic acid, croton oil, sulphate of zinc, sugar of lead, carbolic acid, sulphuric acid, muriatic acid, nitric acid, phosphorous, and all preparations, compounds, salts, extracts, or tinctures of such substances.

## POLICE.

An act to create a police relief, health, and life insurance and pension fund in the several counties, cities and counties, cities, and towns of the state.

[Approved March 4, 1889; 1889, 56. Amended 1891, 278, 469; 1897, 52.]

Section 1. The chairman of the board of supervisors of the county, city and county, city, or incorporated town in which there is no board of police commissioners, the treasurer of the county, city and county, or incorporated town, and the chief of police, and their successors in office, are hereby constituted a board of trustees of the police relief or pension fund of the police department, to provide for the disbursement of the same and to designate the beneficiaries thereof as hereinafter directed, which board shall be known as the "Board of Police Pension Fund Commissioners"; provided, however, that where there is in any county, city and county, city, or town, a board of police commissioners, then such body shall constitute said board of trustees of the police relief and pension fund of the police department. [Amendment approved March 31, 1891. Stats. 1891, 469.]

Sec. 2. They shall organize as such board by choosing one of their number as chairman, and by appointing a secretary. The treasurer of the county, city and county, city, or town, shall be ex-officio treasurer of said fund. Such board of trustees shall have charge of and administer said fund, and to order payments therefrom in pursuance of the provisions of this act. They shall report annually, in the month of June, to the board of supervisors, or other governing authority of the county, city and county, city, or incorporated town, the condition of the police relief and pension fund, and the receipts and disbursements on account of the same, with a full and complete list of the beneficiaries of said fund and the amounts paid them. [Amendment approved March 31, 1891. Stats. 1891, p. 469.]

Sec. 3. Whenever any person at the taking effect of this act, or thereafter shall have been duly appointed or selected and sworn, and have served for twenty years, or more, in the aggregate, as a member, in any capacity or any rank whatever, of the regularly constituted police department of any such county, city and county, city, or town which may hereafter be subject to the provisions of this act, said board may, if it see fit, order and direct that such person after becoming sixty years of age be retired from further service in such police department, and from the date of the making of such order the service of such person in such police department shall cease, and such person so retired shall thereafter, during his lifetime, be paid from such fund a yearly pension equal to one-half of the amount of salary attached to the rank which he may have held in said police department for the period of one year next preceding the date of such retirement. [Amendment approved March 2, 1897. Stats. 1897, p. 52, In effect immediately.]

Sec. 4. Whenever any person, while serving as a policeman in any such county, city and county, city, or town. shall become physically disabled by reason of any bodily injury received in the immediate or direct performance or discharge of his duty as such policeman, said board may, upon his written request, or without such request, if it deem it to be for the good of said police force, retire such person from said department, and order and direct that he shall be paid from said fund, during his lifetime, a yearly pension equal to one-half of the amount of salary attached to the rank which he may have held on such police force at the date of such retirement, but on the death of such pensioner his heirs or assigns shall have no claim against or upon such police relief or pension fund; provided, that whenever such disability shall cease such pension shall cease, and such person shall be restored to active service at the same salary he received at the time of his retirement. [Amendment approved March 2, 1897. Stats. 1897, p. 52. In effect immediately.]



Sec. 5. No person shall be retired, as provided in the next preceding section, or receive any benefit from said fund, unless there shall be filed with said board certificates of his disability, which certificates shall be subscribed and sworn to by said person, and by the county, city and county, city, or town physician (if there be one), and two regularly licensed practicing physicians of such county, city and county, city, or town, and such board may require other evidence of disability before ordering such retirement and payment as aforesaid.

Sec. 6. Whenever any member of the police department of such county, city and county, city, or town, shall lose his life while in the performance of his duty, leaving a widow, or child or children under the age of sixteen years, then upon satisfactory proof of such facts made to it, such board shall order and direct that a yearly pension, equal to one-third the amount of the salary attached to the rank which such member held in said police department at the time of his death, shall be paid to such widow during her life, or if no widow, then to the child or children, until they shall be sixteen years of age; provided, if such widow, or child or children, shall marry, then such person so marrying shall thereafter receive no further pension from such fund.

Sec. 7. Whenever any member of the police department of such county, city and county, city, or town shall, after ten years of service, die from natural causes, then his widow or children, or if there be no widow or children, then his mother or unmarried sisters, shall be entitled to the sum of one thousand dollars from such fund. [Amendment approved March 31, 1891. Stats. 1891, p. 287. In effect immediately.]

Sec. 8. Any person retired for disability under this act may be summoned before the board herein provided for at any time thereafter, and shall submit himself thereto for examination as to his fitness for duty, and shall abide the decision and order of such board with reference

thereto; and all members of the police force who may be retired under the provisions of this act shall report to the chief of police of the county, city and county, city, or town where so retired, on the first Mondays of April, July, October, and January of each year; and in cases of great public emergency may be assigned to and shall perform such duty as said chief of police may direct; and such persons shall have no claim against the county, city and county, city, or town, for payment for such duty so performed.

Sec. 9. When any person who shall have received any benefit from said fund shall be convicted of any felony, or shall become an habitual drunkard, or shall become a non-resident of this state, or shall fail to report himself for examination for duty as required herein, unless excused by the board, or shall disobey the requirements of said board under this act, in respect to said examination or duty, then such board shall order that such pension allowance as may have been granted to such person shall immediately cease, and such person shall receive no further pension, allowance, or benefit under this act.

Sec. 10. The board herein provided for shall hold quarterly meetings on the first Mondays of April, July, October, and January of each year, and upon the call of its president; it shall biennially select from its members a president and secretary; it shall issue warrants, signed by its president and secretary, to the persons entitled thereto of the amount of money ordered paid to such persons from such fund by said board, which warrant shall state for what purpose such payment is to be made; it shall keep a record of all its proceedings, which record shall be a public record; it shall, at each quarterly meeting, send to the treasurer of the county, city and county, city, or town, and to the auditor of such county, city and county, city, or town, a written or printed list of all persons entitled to payment from the fund herein provided for, stating the amount of such payments and for what granted,

which list shall be certified to and signed by the president and secretary of such board, attested under oath. The auditor shall thereupon enter a copy of said list upon a book to be kept for that purpose, and which shall be known as "The police relief and pension fund book." When such list has been entered by the auditor, he shall transmit the same to the board of supervisors, or other governing authority of such county, city and county, city, or town, which board of authority shall order the payment of the amounts named therein out of "The police relief and pension fund." A majority of all the members of said board herein provided for shall constitute a quorum, and have power to transact business.

Sec. 11. The board herein provided for shall, in addition to other powers herein granted, have power,—

First—To compel witnesses to attend and testify before it, upon all matters connected with the operation of this act, in the same manner as is or may be provided by law for the taking of testimony before notaries public; and its president, or any member of said board, may administer oaths to such witnesses.

Second—To appoint a secretary, and to provide for the payment from said fund of all its necessary expenses including secretary hire and printing; provided, that no compensation or emolument shall be paid to any member of said board for any duty required or performed under this act.

Third—To make all needful rules and regulations for its guidance, in conformity with the provisions of this act.

Sec. 12. The board of supervisors, or other governing authority, of any county, city and county, city, or town, shall, for the purposes of said "Police relief and pension fund" hereinbefore mentioned, direct the payment annually, and when the tax levy is made, into said fund, of the following moneys:—

First—Not less than five nor more than ten per centum

of all moneys collected and received from licenses for the keeping of places wherein spirituous, malt, or other intoxicating liquors are sold.

Second—One-half of all moneys received from taxes or from licenses upon dogs.

Third—All moneys received from fines imposed upon the members of the police force of said county, city and county, city, or town, for violation of the rules and regulations of the police department.

Fourth—All proceeds of sales of unclaimed property.

Fifth—Not less than one-fourth nor more than one-half of all moneys received from licenses from pawnbrokers, billiard-hall keepers, second-hand dealers, and junk stores.

Sixth—All moneys received from fines for carrying concealed weapons.

Seventh—Twenty-five per centum of all fines collected in money for violation of county, city and county, city, or town ordinances.

Eighth—All rewards given or paid to members of such police force, except such as shall be excepted by the chief of police.

Ninth—The treasurer of any county, city and county, city, or town shall retain from the pay of each member of police department the sum of two dollars per month, to be forthwith paid into said police relief and pension fund, and no other or further retention or deduction shall be made from such pay for any other fund or purpose whatever.

Sec. 13. Any police life and health insurance fund, or any fund provided by law, heretofore existing in any county, city and county, city, or town, for the relief of pensioning of police officers, or their life or health insurance, or for the payment of a sum of money on their death, shall be merged with, paid into, and constitute a part of the fund created under the provisions of this act; and no person who has resigned or been dismissed from said police department shall be entitled to any relief from such

fund; provided, that any person, who, within one year prior to the passage of this act, has been dismissed from the police department for incompetency or inefficiency, and which incompetency or inefficiency was caused solely by sickness or disability contracted or suffered while in service as a member thereof, and who has, prior to said dismissal, served for twelve or more years as such member, shall be entitled to all the benefits of this act.

Sec. 14. On the last day of June of each year, or as soon thereafter as practicable, the auditor of such county, city and county, city, or town shall make a report to the board of supervisors, or other governing authority of such county, city and county, city, or town, of all moneys paid out on account of said fund during the previous year, and of the amount then to the credit of the "Police relief and pension fund," and all surplus of said fund then remaining in said fund exceeding the average amount per year paid out on account of said fund during the three years next preceeding, shall be transferred to and become a part of the general fund of every such county, city and county, city or town, and no longer under the control of said board, or subject to its order. Payments provided for in this act shall be made quarterly, upon proper vouchers.

Sec. 15. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 16. This act shall take effect from and after its passage.

An act to provide for the compensation of the chief and captain of the police and police-officers in cities in the state of California containing not less than ten thousand and not exceeding twenty-five thousand inhabitants.

[Approved March 23, 1893. Stats. 1893, p. 280.]

This act was declared unconstitutional in *Darey v. Mayor of San Jose*, 104 Cal. 642.

An act to increase the police force of the various cities, and cities and counties, and towns of the state, and to provide for the appointment of such extra police-officers, and for the payment of their salaries.

[Approved February 24, 1891. Stats. 1891, 10.]

Section 1. The board of supervisors, board of trustees, or common council of a city, or city and county, or town • of this state, of the first, second or fourth classes, are hereby authorized and empowered to increase the police force of their respective cities, and cities and counties, or towns, from time to time, as may be deemed necessary by said common council, board of trustees, or board of supervisors; provided, that the police force in any city or city and county shall not exceed in the aggregate, at any time, one member for every five hundred inhabitants of such city or city and county; provided further, that in cities of the third class the police force shall not exceed in the aggregate, at any time, one member for every one thousand inhabitants of said cities, according to the latest census of the United States; said additional police force to be appointed by the board of police commissioners or other board or authority now by law empowered to appoint police-officers in their respective cities or cities and counties, or towns.

Sec. 2. The salary of additional police-officers hereby authorized shall be of the same amounts for each officer as is now paid by law to the other members of such police force in their respective cities, or cities and counties, or towns; and said additional police-officers shall be paid at the same time and in the same manner and out of the same fund as the other members of their respective police forces are now or shall hereafter be paid.

Sec. 3. The terms common council, board of trustees, and board of supervisors are hereby declared to include any body or board which, under the law, is the legislative department of the government of any city, or city and county, or town.

Sec. 4. This act shall be in force and effect from and after its passage.

An act authorizing and requiring boards or commissions having the management and control of said police force to grant the members thereof yearly vacations.

[Approved March 10, 1891. Stats. 1891, p. 47.]

Section 1. In every city or city and county of this state where there is a regularly organized paid police force, the board of supervisors, common council, commissions, or other body having the management and control of the same, are authorized and required once in every year to provide for granting each member thereof a leave of absence from active duty for a period of not less than ten nor more than fifteen days. Leaves of absence so granted must be arranged by said board or commission so as not to interfere with the police protection of any such city or city and county, or to impair in any way the efficiency of the department; and leaves of absence granted in case of sickness or in consequence of wounds or injuries received while in the discharge of duty shall not be construed to be or become a part of the leave of absence provided for by this act. No deduction must be made from the pay of any police-officer granted a leave of absence under provisions of this act.

Sec. 2. This act shall take effect immediately.

An act regulating the hours of service on regular duty by members of the police department of cities of the first class, cities and counties, cities of the first and one-half class, and cities of the second class.

[Approved February 27, 1903. Stats. 1903, 51.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. In all cities of the first class, cities and counties, cities of the first and one-half class, and cities of the second class of this state where a regular police department is maintained, patrol captains, lieutenants,

sergeants, and regular officers shall be required to serve on duty not longer than eight hours in every twenty-four hours; provided, that in case of riot or other emergency, every attaché of the police department shall perform such duty and for such time as the directing authority of the department shall require.

Sec. 2. This act shall take effect immediately.

An act to provide for the appointment of policemen, with the powers of peace officers, to serve upon the premises, cars or boats of railroad and steamship companies.

[Approved March 23, 1901. Stats. 1901, p. 666.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. The governor of the state of California is hereby authorized and empowered, upon the application of any railroad or steamboat company, to appoint and commission during his pleasure one or more persons designated by such company and to serve at the expense of such company, as policeman or policemen, with the powers of peace officers, and who, after being duly sworn, may act as such policeman or policemen upon the premises, cars or boats of such company. The company designating such person or persons shall be responsible civilly for any abuse of his or their authority.

Sec. 2. Every such policeman shall, when on duty, wear in plain view a shield bearing the words "railroad police," or "steamboat police," as the case may be, and the name of the company for which he is commissioned.

Sec. 3. This act shall take effect immediately.

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### PRIZE FIGHTING.

An act to prohibit prize fighting.

[Approved March 9, 1893. Stats. 1893, p. 101.]

Superseded by sec. 412, Penal Code.



## PROSTITUTION.

An act to prevent compulsory prostitution of women, and the importation of Chinese or Japanese women for immoral purposes, and to provide penalties therefor.

[Approved March 23, 1893. Stats. 1893, 217.]

Section 1. Every person who, within this state, takes by inducement any female, against her will and without her consent, for the purpose of prostitution, is punishable by imprisonment in the state's prison not exceeding five years and a fine not exceeding one thousand dollars.

Sec. 2. Every person who takes any woman unlawfully, and against her will, and by force, menace, or duress compels her to live with him in an illicit relation, against her consent, or to so live with any other person, is punishable by imprisonment in the state's prison not less than two nor more than four years.

Sec. 3. Every person bringing to or landing within this state any woman born in the empire of China or Japan, or the islands adjacent to the empire of China, with intent to place her in charge or custody of any other person, and against her will to compel her to reside with him, or for the purpose of selling her to any person whatsoever, is punishable by a fine not less than one nor more than five thousand dollars, or by imprisonment in the county jail not less than six nor more than twelve months.

Sec. 4. Any person who shall sell or receive any money or other valuable thing for or on account of his placing in custody any female for the purpose of causing her to cohabit with any other male or persons to whom she is not married, shall be guilty of a misdemeanor.

Sec. 5. Any person who shall purchase or pay any money or other valuable thing for any female for the purpose of prostitution, or for the purpose of placing her for immoral purposes in any house or place against her will, shall be fined not less than one thousand dollars nor more than five thousand dollars, and by imprisonment in the county

jail for a period not less than one year, nor more than five years.

Sec. 6. Every person who shall sell any woman, or receive any money or other valuable thing for or on account of his placing in custody for immoral purposes any woman, with or without her consent, is punishable by imprisonment in the state's prison not exceeding five years, and a fine not exceeding one thousand dollars.

An act to prevent the placing or keeping or leaving of married women in houses of prostitution, and to punish persons therefor.

[Approved March 31, 1891. Stats. 1891, p. 285.]

Section 1. Any man who by force, fraud, intimidation, threats, persuasions, promises, or any other means, places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or connives at, consents to, or permits the placing or leaving of his wife in a house of prostitution, or allows or permits his wife to remain therein, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the state prison for not less than three years nor more than ten years.

Sec. 2. In all prosecutions under this act, the wife shall be a competent witness against the husband.

Sec. 3. This act shall take effect immediately.

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### PUBLIC HEALTH.

An act to protect public health from infection caused by exhumation and removal of the remains of deceased persons.

[Approved April 1, 1878. Stats. 1877-8, 1050. Amended 1889, 139.]

Section 1. It shall be unlawful to disinter or exhume from a grave, vault, or other burial place, the body or remains of any deceased person, unless the person or per-

sons so doing shall first obtain, from the board of health, health-officer, mayor, or other head of the municipal government of the city, town, or city and county where the same are deposited a permit for said purpose. Nor shall such body or remains disinterred, exhumed, or taken from any grave, vault, or other place of burial or deposit, be removed or transported in or through the streets or highways of any city, town, or city and county, unless the person or persons removing or transporting such body or remains shall first obtain, from the board of health or health-officer (if such board or officer there be), and from the mayor or other head of the municipal government of the city or town, or city and county, a permit, in writing, so to remove or transport such body or remains in and through such streets and highways.

Sec. 2. Permits to disinter or exhume the bodies or remains of deceased persons, as in the last section, may be granted, provided the person applying therefor shall produce a certificate from the coroner, the physician who attended such deceased person, or other physician in good standing cognizant of the facts, which certificate shall state the cause of death or disease of which the person died, and also the age and sex of such deceased; and provided further, that the body or remains of the deceased shall be inclosed in a metallic case or coffin, sealed in such manner as to prevent, as far as practicable, any noxious or offensive odor or effluvia escaping therefrom, and that such case or coffin contains the body or remains of but one person, except where infant children of the same parent or parents, or parent and children, are contained in such case or coffin. And the permit shall contain the above conditions and the words: "Permit to remove and transport the body of ————, age ———, sex ———," and the name, age and sex shall be written therein. The officer of the municipal government of the city or town, or city and county, granting such permit, shall require to be paid for each permit the sum of ten

dollars, to be kept as a separate fund by the treasurer, and which shall be used in defraying expenses of and in respect to such permits, and for the inspection of the metallic cases, coffins, and inclosing boxes herein required; and an account of such moneys shall be embraced in the accounts and statements of the treasurer having the custody thereof.

Sec. 3. Any person or persons who shall disinter, exhume, or remove, or cause to be disinterred, exhumed, or removed, from a grave, vault, or other receptacle, or burial place, the body or remains of a deceased person, without a permit therefor, shall be guilty of a misdemeanor, and be punished by fine not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. Nor shall it be lawful to receive such body, bones, or remains on any vehicle, car, barge, boat, ship, steamship, steamboat, or vessel, for transportation in or from this state, unless the permit to transport the same is first received, and is retained in evidence by the owner, driver, agent, superintendent, or master of the vehicle, car, or vessel.

Sec. 4. Any person or persons who shall move or transport, or cause to be moved or transported, on or through the streets or highways of any city or town, or city and county, of this state, the body or remains of a deceased person, which shall have been disinterred or exhumed without a permit, as described in section two of this act, shall be guilty of a misdemeanor, and be punishable as provided in section three of this act.

Sec. 5. Any person who shall give information to secure the conviction of any person or persons for the violation of the provisions of this act shall be entitled to receive the sum of twenty-five dollars, to be paid from the fund collected from fines imposed and accruing under this act.

Sec. 6. Nothing in this act contained shall be taken to apply to the removal of the remains of deceased persons

from one place of interment to another cemetery or place of interment within this state; provided, that no permit shall be issued for the disinterment or removal of any body unless such body has been buried for one year or more without the written consent of the mayor, chairman of the board of supervisors or city council of any municipality of the state. [Amendment approved March 13, 1889. Stats. 1889, p. 139.]

Sec. 7. This act shall take effect and be in force from the thirtieth day after its passage and approval.

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### SCHOOL OF INDUSTRY.

Act relating to commitments to school of industry: See post, title School of Reform.

Act to prevent evil-disposed persons from coming on grounds of: See post, title School of Reform.

An act to establish a school of industry, to provide for the maintenance and management of the same, and to make an appropriation therefor.

[Approved March 11, 1889; 1889, 100. Amended 1893, 39.]

Section 1. There shall be established at or within a convenient distance from Ione City, in the county of Amador, in said state, an educational institution to be designated as the Preston school of industry.

Sec. 2. The sum of one hundred and sixty thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the purpose of purchasing and preparing grounds for the erection of buildings thereon, for the purchase of the necessary furniture, machinery and supplies, and for the payment of the current expenses of said school.

Sec. 3. The general government and supervision of said school shall be vested in a board of trustees consisting of three citizens of the state of California, who shall be appointed by the governor. The members of said board

shall hold their offices for the respective terms of two, three and four years, from the first day of July, eighteen hundred and ninety-three, and until their successors shall be appointed and qualified, said respective terms to be designated in their appointments; and thereafter, upon the expiration of such terms, there shall be one of said board appointed, whose term of office shall be continued four years, and until his successor is appointed and qualified. Said trustees, before entering on the discharge of the duties of their office, shall each take an oath faithfully to discharge the same. [Amendment approved February 27, 1893. Stats. 1893, p. 39. In effect July 1, 1893.]

Sec. 4. The board shall, with all convenient dispatch, select and establish a site at some suitable place in said county for said institution, and procure the right of way for suitable drainage; said site to contain not less than one hundred acres nor more than three hundred acres of land, to have water facilities sufficient for the uses of said school, and for power in operating machinery; the land to be of a quality suitable for general farming purposes, and adapted to the cultivation of vines and fruit trees. The land so set apart by said purchase shall hereafter be used exclusively for the occupancy and purposes of said school. It shall be indicated by fixed corners and definite boundaries. A description thereof, together with the deed therefor, shall be filed with the secretary of state at his office within thirty days after the purchase of the same.

Sec. 5. Thereafter the board shall cause to be prepared and shall adopt plans for the grounds, buildings, and fixtures necessary for such an institution, of such form, dimensions, and style as to it shall seem best adapted to the purposes thereof. In the preparation of such plans, and in the construction of the buildings, it may employ a competent architect at a reasonable compensation.

Sec. 6. No member of the board or employee of the institution shall be interested in any contract or enterprise

in connection with said school. [Amendment approved February 27, 1893. Stats. 1893, p. 39. In effect July 1, 1893.]

Sec. 7. This act shall be construed as the sole and exclusive act on the subject-matter contained herein, unless specially or otherwise herein provided; and none of the provisions of an act entitled "An act to regulate contracts on behalf of the state in relation to erections of buildings," approved March twenty-third, eighteen hundred and seventy-six, or any other act, unless herein specially referred to, shall apply to or govern or limit this act, or any of the powers or duties in this act conferred upon said board.

Sec. 8. Nothing in this act contained shall be so construed as to permit any convict or convicts, undergoing sentence in either of the state prisons of California, to associate with, or be so employed as to mingle with, any person or persons undergoing commitment in the said school.

Sec. 9. The said school shall be conducted on such plan as to the board may seem best calculated to carry out the intentions of this act, and its inmates shall be subject to military discipline, including daily drill. They shall be clothed in military uniform of such pattern and material as may be prescribed by the board, but under no circumstances shall such inmates be clothed in convict stripes while undergoing commitment in said school. [Amendment approved February 27, 1893. Stats. 1893, p. 39. In effect July 1, 1893.]

Sec. 10. The members of the board shall receive no compensation for their services, but shall be allowed their reasonable expenses incurred while in the discharge of their official duties. The superintendent shall receive a salary, to be fixed by the board, not to exceed three thousand dollars per annum. The military instructor shall receive a salary, to be fixed by the board, not to exceed twelve hundred dollars per annum. The secretary and

commissary shall each receive a salary, to be fixed by the board, not to exceed fifteen hundred dollars per annum. The salary of no other officer or employee of the school shall exceed twelve hundred dollars per annum. The power of the board to fix the compensation of the officers and employees, as provided in section twelve of this act, shall be subject to these limitations. [Amendment approved February 27, 1893. Stats. 1893, p. 39. In effect July 1, 1893.]

Sec. 11. The board shall elect a superintendent, a military inspector, and a secretary. The superintendent and secretary shall give such bonds for the faithful performance of their duties as the board shall determine. The bond of the superintendent shall be for a sum of not less than ten thousand dollars, and that of the secretary of not less than five thousand dollars. The military instructor must be a man who is a good disciplinarian, and skilled in military tactics. He shall receive from the governor a commission, with the rank of major. He shall perform such duties and receive such salary as the board may prescribe. The board shall meet once in three months for the transaction of business. Special meetings may be called by the president when deemed necessary.

Sec. 12. The board shall cause to be organized and maintained a department of instruction for the inmates of said school, with a course of study corresponding, as far as practicable, with the course of study in the public schools of this state, but the course shall not be higher than the course prescribed in grammar schools. They shall adopt a system of government, embracing such laws and regulations as are necessary for the guidance of the officers and employees, for the regulation of the hours of study and labor, for the preservation of order, for the enforcement of discipline and military training, for the preservation of health, and for the industrial training of the inmates. The ultimate purpose of all such instruction, dis-



cipline, and industries shall be to qualify the inmates for honorable and profitable employment after their release from the institution, rather than to make said institution self-sustaining. The board shall also determine the number of officers and employees required, and shall prescribe their duties and fix the amount of their compensation.

Sec. 13. The superintendent, before entering upon the discharge of his duties, shall make and file with the board an oath that he will faithfully and impartially discharge the duties of his office. Thereupon he shall, subject to the regulations prescribed by the board, be invested with the custody of the lands, buildings, and all other property belonging to and under the control of the said institution. He shall receive for his services a salary not exceeding the sum of three thousand dollars per annum. He shall appoint, except as hereinbefore provided, all officers and employees of said institution, who shall hold office during his pleasure. He shall provide a book in which shall be registered the name, residence, occupation, and religious creed of every boy received into the school; the date of his reception, and the date and condition of his discharge; the names, residence, and occupation of his parents; whether the boy was apprenticed or not, and if so apprenticed, the name, residence, and occupation of the person to whom he was apprenticed. He shall have charge of all persons committed to the institution by any magistrate or court, shall use his best efforts to employ, instruct, discipline, and reform all such persons under his charge, and shall discharge such other duties as the said board may direct, and shall at all times be subject to removal by the board for incapacity, immorality, negligence of duty, or cruelty to the inmates.

Sec. 14. [Repealed February 27, 1893. Stats. 1893, p. 40. In effect July 1, 1893.]

Sec. 15. When any boy under the age of eighteen years shall be found guilty, by a magistrate or court of com-

petent jurisdiction, of any offense punishable by fine or by imprisonment, or by both, and who, in the opinion of such magistrate or court, would be a fit subject for commitment to the said school, it shall be lawful for the magistrate or court to suspend judgment or sentence (except when the penalty is life imprisonment or death), and to commit such boy to the said school for a period not exceeding the time when he shall attain his twenty-first birthday, unless sooner discharged by law, or as in this act provided; but no boy who is under the age of eight years, or who is of unsound mind, shall be committed to the said school. The board shall have authority to make rules reducing, as the reward for good conduct, the time for which such person or persons have been committed. It shall be the duty of all courts and magistrates committing any boy to such school to certify to the superintendent thereof the age of the person so committed as nearly as can be ascertained by testimony taken under oath before such court or magistrate, or in such manner as the court or magistrate may direct.

Sec. 16. Before any commitment, made by a police court, or by a justice of the peace, under this act, shall be executed, it shall be approved by a judge of the superior court of the county in which the police court or justice of the peace has jurisdiction, and his approval indorsed on the warrant of commitment. But if such sentence shall be disapproved, the police court or justice of the peace shall then impose the ordinary sentence prescribed by law.

Sec. 17. It shall be lawful for the board, whenever it may deem any inmate of said institution to have been so far reformed as to justify his discharge, to give him an honorable dismissal, and to cause an entry of the reasons for such dismissal to be made in the book of records prepared for that purpose. All persons thus honorably dismissed, and all those who shall have served the full term of their respective sentences, shall thereafter be released from all penalties and disabilities resulting from the of-

fenses or crimes for which they were committed. Upon the final discharge of any inmate as in this section provided, the superintendent shall immediately certify such discharge in writing, and shall transmit the certificate to the magistrate or court by which such inmate or boy was committed. Said magistrate or court shall thereupon dismiss the accusation and the action pending against said person.

Sec. 18. The board shall have authority also to issue certificates of conditional dismissal and parole to any worthy boy confined in the institution, on the following conditions: It may bind such boy, by articles of indenture, to any suitable person, who will engage to educate him, and to instruct him in some useful art or trade, or it may return him to his parents, or it may place him under the care of any reputable person who is a citizen and a resident of this state, after such person, parent, guardian, or resident citizen shall have become bound to the said board, with good and sufficient sureties, conditioned on the proper custody, care, education, and moral and industrial training of the said paroled boy. The time of such conditional release shall be made subject to good behavior and continued reformation on the part of the person thus paroled. Any boy who violates his parole, or who becomes habitually disobedient and incorrigible, may be returned to the said school to serve the unexpired term of his sentence, or complaint of his guardian and the written requisition of the superintendent of the said school, and if received from either of the state prisons may be returned to the same. Every paroled boy who properly observes and obeys the condition of his parole until the date of the expiration of his time of commitment shall be entitled to all the benefits and immunities in this act provided.

Sec. 19. Any boy who shall, during the time of his commitment, be found incorrigible, or who shall be an improper subject for detention in said school, may be re-

turned to the magistrate or court by which said boy was committed; and upon written complaint of the board, attested by the superintendent and filed with the original complaint, it shall be lawful for said court or magistrate to enter judgment and pass such sentence as would have been lawful at the time when the offender was first committed to the said school, and if committed from either of the state prisons may be returned to the prison whence received to serve out his unexpired term.

Sec. 20. Any boy under the age of eighteen years, who is undergoing sentence in any state prison in this state (except such as are undergoing a life sentence), and who shall be deemed a fit subject for training in the said school, may, upon recommendation of the state board of prison directors, with the approval of the governor, be transferred to said school for the unexpired period of his sentence, and when honorably discharged from said school, as hereinbefore provided, shall be entitled to such benefits and immunities as are provided for the other inmates of the institution.

Sec. 21. Any person who knowingly permits or who aids any boy to escape from the said school, or who knowingly promotes his departure, or conceals him with the intent of enabling such escaped boy to elude pursuit, shall be guilty of a misdemeanor, and shall, upon conviction, be punished according to law. Any fugitive from said institution, or from the parties to whom he is bound out or apprenticed, may be arrested and returned to the institution by any person upon written request or order of the superintendent directed to such person.

Sec. 22. The board of trustees are hereby authorized and required to contract for provisions, clothing, medicines, forage, fuel, and other staple supplies of the school for any period of time not exceeding one year, and such contracts shall be limited to bona fide dealers in the several classes of articles contracted for. Contracts for such arti-

cles as the board may desire to contract for shall be given to the lowest bidder at a public letting thereof, and if the price bid is a fair and reasonable one, and not greater than the usual market value and prices. Each bid shall be accompanied by such security as the board may require, conditioned upon the bidder entering into a contract upon the terms of his bid, on notice of the acceptance thereof, and furnishing a bond, with good and sufficient sureties, in such sum as the board may require, and to their satisfaction, that he will faithfully perform his contract. If the proper officer reject any article as not complying with the contract, or if a bidder fail to furnish the articles awarded to him when required, the proper officer of the school may buy other articles of the kind rejected or called for, in the open market, and deduct the price thereof over the contract price from the amount due to the bidder, or charge the same up against him. Notice of the time, place, and conditions of the letting of contracts shall be given for at least two consecutive weeks in one newspaper printed and published in the city and county of San Francisco, in one newspaper printed and published in the city of Sacramento, and in one newspaper printed and published in the county of Amador. If all bids made at such letting are deemed unreasonably high, the board may, in their discretion, decline to contract, and may again advertise for such time and in such papers as they see proper for proposals, and may so continue to renew the advertisement until satisfactory contracts are made; and in the mean time the board may contract with any one whose offer is regarded just and equitable, or may purchase in the open market. No bid shall be accepted, nor a contract entered into in pursuance thereof, when such bid is higher than any other bid at the same letting for the same class or schedule of articles, quality considered, and when a contract can be had at such lower bid. When two or more bids for the same article or articles are equal in amount, the board may select the one which, all things considered, may by them be thought best for the interest of the state,

or they may divide the contract between the bidders, as in their judgment may seem proper and right. The board shall have power to let a contract in the aggregate, or they may segregate the items and enter into a contract with the bidder or bidders who may bid lowest on the several articles. The board shall have the power to reject the bid of any person who had a prior contract, and who had not in the option of the board faithfully complied therewith. [Amendment, approved February 27, 1893. Stats. 1893, p. 40; in effect July 1, 1893.]

Sec. 23. When the premises are ready for occupancy, the board shall certify such fact to the governor, who shall make due proclamation thereof. Thereafter it shall be lawful for any competent magistrate or court to commit juvenile offenders to the institution, as herein provided.

Sec. 24. The controller of state is hereby authorized and directed, on requisition of the said board, to draw his warrant on the state treasurer in favor of said board, to pay for the necessary expenditures in the establishment and maintenance of the said school, and the state treasurer is authorized to pay the same from the appropriations provided for in this act.

Sec. 25. For the purpose of giving practical effect to the provisions of this act, all laws or parts of laws which conflict with the provisions hereof are, for the purposes of this act only, suspended, and hereby made inapplicable to any boy committed to and in the custody of said school.

Sec. 26. In all proceedings relating to commitments under this act, the fees and compensation of the sheriff and other officers of the court shall be such as are allowed by law for like proceedings and services in criminal cases.

Sec. 27. This act shall be construed in conformity with the intent as well as with the express provisions hereof, and shall confer upon the board authority to do all those lawful acts, from time to time, which are necessary to promote the prosperity of the institution and the well-being

and reformation of its inmates, including the organization of trade schools, the purchase and use of fixed and movable machinery, the erection of necessary buildings for machinery and other purposes, the improvement and management of a farm, orchard, and garden, the purchase of necessary supplies for the institution, and materials for manufacture, and performance of all other necessary and lawful acts, not otherwise prohibited, which may be required to comply with the purposes of this act; but nothing herein contained shall be so construed as to permit said board to incur any indebtedness or obligation in excess of the appropriations allowed by law for the establishment and maintenance of said school.

Sec. 28. This act shall take effect and be in force from and after its passage.

The act of February 27, 1893 (Stats. 1893, p. 39), amending the act creating the school of industry, in addition to the provisions incorporated in the above act, contained the following:

Sec. 7. For the purpose of preventing any inconvenience arising from the transfer of the power of superintendence and government of said school from the state board of prison directors to said board of trustees, this act shall, after the first day of July, eighteen hundred and ninety-three, confer and devolve upon said board of trustees all the powers, duties, and responsibilities conferred or devolved upon the state board of prison directors, by virtue of any act heretofore passed or that may be passed in relation to said school at the present session of the legislature, and said board of trustees shall, so far as the government and control of said school or any appropriation relating thereto is concerned, become and remain the successors of said state board of prison directors.

Sec. 8. This act shall take effect and be in force from and after the first day of July, eighteen hundred and ninety-three.



An act to appropriate money for the completion of the building of the Preston school of industry at Ione, and for furnishing and equipping the same.

[Approved March 3, 1893. Stats. 1893, p. 65.]

The act appropriated \$145,000 for the purposes mentioned.

An act to provide for the purchase of additional land for the Preston school of industry at Ione.

[Approved April 1, 1897. Stats. 1897, 422.]

Section 1. The board of trustees of the Preston school of industry are hereby authorized to purchase from Mrs. Emma Rendell, for the state of California, that tract of land contiguous to the tract of land now used as the ranch of the Preston school of industry at Ione. Said land to be purchased being described as follows: All that certain tract or parcel of land lying and being in Ione Valley, in the county of Amador, in the state of California, and known as the Oak Grove ranch, and bounded and described as follows: Beginning at the northwest corner of the inclosure opposite the Oak Grove house on the road between Ione City and the "Q" ranch, which corner is six chains and forty-six links from the north side of said road measured along the western fence of said inclosure, thence running across "Mule" Creek south seventy-five degrees and fifteen minutes east (true bearing) along the northern fence of said inclosure forty-four chains to corner of said fence, thence continuing the said course sixteen chains more, making in all sixty chains to stake marked seven, thence south fourteen degrees forty-five minutes west (true bearing), crossing two branches of the aforesaid road forty chains to a stake marked seven, thence north seventy-five degrees fifteen minutes west (true bearing), descending the bluff on the south side of "Mule" Creek bottom, sixty chains to a stake at the southeast corner of an inclosure formerly occupied by A. R.



Phillips, thence north fourteen degrees forty-five minutes east (true bearing) along the fence of said inclosure crossing "Mule" Creek, and the aforesaid road forty chains to the place of beginning, containing in all two hundred and forty acres, including the aforesaid road—variation of needle fifteen degrees forty seconds; provided, a good title, free and clear of incumbrance, can be obtained; and provided further, that the purchase price shall not exceed five thousand dollars, gold coin of the United States of America.

Sec. 2. The sum of five thousand dollars, or such portion thereof as may be necessary, is hereby appropriated out of any money in the state treasury not otherwise appropriated, for the purchase mentioned in the first section of this act; and the controller is hereby authorized to draw his warrant for said amount, and the treasurer is hereby directed to pay the same.

Sec. 3. This act shall take effect immediately.

An act to provide for certain improvements at the Preston school of industry, Ione, and to make an appropriation therefor.

[Approved April 1, 1897. Stats. 1897, 577.]

An act appropriating money for the maintenance and improvement of the water system at the Preston school of industry, including the construction of a settling reservoir.

[Approved March 25, 1901. Stats. 1901, 811.]

The act appropriated \$7,000 for the purpose specified.

#### SCHOOL OF REFORM.

An act to establish a state reform school for juvenile offenders, and to make an appropriation therefor.

[Approved March 11, 1889; 1889, 111. In effect immediately.

Amended 1893, 328; 1905, p. 80.

By the statutes of 1893, p. 328, the title of this act was amended so as to read: "An act to establish a school for

the discipline, education, employment, reformation and protection of juvenile delinquents in the state of California to be known as the 'The Whittier State School.''' The act itself is as follows:

Section 1. There shall be established and maintained in this state, and located at Whittier, in the county of Los Angeles, an institution for the discipline, education, employment, reformation, and protection of juvenile delinquents in the state of California, to be known as "The Whittier State School;" and in all judicial, official, or other proceedings, and in all contracts, transfers, or other instruments in writing, the above name shall be deemed a sufficient designation of said institution. [Amendment approved March 23, 1893. Stats. 1893, 328. In effect immediately.]

Sec. 2. The general supervision and government of said institution shall be vested in a board of trustees, consisting of three citizens of the state of California, who shall be appointed by the governor, with the advice and consent of the senate. The members of said board shall hold their offices for the respective terms of two, three, and four years from the first day of March, eighteen hundred and eighty-nine, and until their successors shall be appointed and qualified, said respective terms to be designated in their appointments; and thereafter there shall be one of said board appointed in the same manner every two years, whose term of office shall continue four years, and until his successor is appointed and qualified. If a vacancy shall occur in said board by expiration of the term of any such trustee, or otherwise, when the senate is not in session, the governor shall fill such vacancy for the unexpired term, subject to the approval of the senate at its next regular session. Said trustees, before entering on the discharge of the duties of their office, shall each take an oath faithfully to discharge the same.

Sec. 3. The trustees of such institution shall be a body corporate and politic for certain purposes, namely: To

receive, hold, use, and convey or disburse moneys or other property, real and personal, in the name of said corporation, but in trust and for the use and by the authority of the state of California, and to control, manage, and direct, the several trusts committed to them respectively, including the organization, government, and discipline of all officers, employees, and other inmates of said institution, with power to make contracts, to sue and be sued, plead and be impleaded, to have and to use a common seal, and to alter the same at pleasure, and to exercise all the powers usually belonging to said corporations and necessary for the successful discharge of the obligations devolved by law upon said members of trust; provided, that they shall not have power to bind the state by any contract or obligation beyond the amount of appropriations which may at the time have been made for the purposes expressed in the contract or obligation, nor to sell or convey any part of the real estate belonging to such institution without the consent of the legislature, except that they may release any mortgage, or convey any real estate which may be held by them as security for any money or upon any trust, the terms of which authorize such conveyance; and provided further, that the legislature shall have power at any time to amend, alter, revoke, or annul the grant of corporate powers herein contained.

Sec. 4. The said board of trustees are hereby empowered with full power and authority to select a site for the permanent location of said school in the county of Los Angeles. Said trustees shall, within thirty days after their appointment and qualification, examine the different sites offered by the people of the county of Los Angeles for the location of the said school, and select therefrom a suitable location for said buildings; and the site selected by them shall be and remain the permanent site for said school; said site to contain not less than forty nor more than one hundred and sixty acres, giving preference, other things being equal, to a location central and easy

of access from all parts of the county or state; provided, that no buildings shall be commenced or erected in said county of Los Angeles until a deed in fee simple of the land selected by the said board of trustees shall be made to the state, and recorded in the records of the county recorder of said Los Angeles-County, and said deed deposited in the office of the secretary of state. [Amendment, approved March 23, 1893. Stats. 1893, p. 328. In effect immediately.]

Sec. 5. The said board of trustees shall prepare and adopt plans for the grounds, buildings, and fixtures necessary and proper for such an institution, not in their judgment to exceed in cost the amount of money hereinafter appropriated, but if practicable, of such description that other buildings can be added to or enlarged without injury to their symmetry or usefulness; and may let or make all necessary contracts, with the approval of the governor, for the construction of such buildings and fixtures, and the improvement of the grounds, according to such plans. Said board of trustees shall use all practicable diligence in the commencement and completion of said buildings and fixtures, and the improvement of the grounds, according to such plans.

Sec. 6. No trustee or employee of such institution shall be personally, directly, or indirectly interested in any contract, purchase, or sale made, or any business carried on, in behalf of or for said institution. All contracts, purchases, or sales made in violation of this section shall be held and declared null and void, and all moneys paid to such trustee, employee, or any other person for his benefit, in whole or in part, in consideration of such purchases, contracts, or sales made, may be recovered back by civil suit, to be instituted in the name of the state of California, against such trustee, employee, or person acting in his behalf; and in addition it is hereby made the duty of the governor and the board of trustees, as the case may be, upon proof satisfactory of the fact of such interest, to immediately remove the trustee or

employee delinquent as aforesaid, and to report the facts to the attorney-general, who shall take such legal steps in the premises as he shall deem expedient.

Sec. 7. The board shall make all needful rules and regulations concerning their meetings and the modes of transacting their business; shall take charge of said institution to see that its affairs are properly conducted, that strict discipline is maintained, and the suitable employment and education are provided for its inmates. They are authorized to make contracts for the purchase of furniture, apparatus, tools, stock, provisions, and everything necessary to equip the institution for the purposes herein specified, and to maintain and operate the same; provided, said board shall incur no expense nor contract any any debt beyond appropriations made or donations given for the said school; and then only in such manner as may be prescribed by the act of appropriation or the instrument of donation. [Amendment approved March 23, 1893. Stats. 1893, p. 329. In effect immediately.]

Sec. 8. The board shall annually elect from their own number a president and a vice-president, whose term of office shall be for one year, and until their successors shall be duly appointed and qualified. They shall also elect a treasurer, not one of their own number, whose term of office shall be for two years and until his successor shall be duly elected and qualified; who shall be at all times subject to removal by the board for good cause. [Amendment, approved March 23, 1893. Stats. 1893, p. 329. In effect immediately.]

Sec. 9. The board shall appoint a superintendent of said school, not of their own number, whose salary shall be fixed by said board, not to exceed three thousand six hundred dollars per annum, and shall also appoint such other officers and such assistants as the wants of the institution may from time to time require, and shall prescribe their duties and fix their salaries, as may be reasonable.

[Amendment, approved March 23, 1893. Stats. 1893, p. 329. In effect immediately.]

Sec. 10. Said board of trustees shall, on or before the first day of December, every two years, make to the governor a full and detailed report of their doings as such trustees, and of the expense of said institution, with such other information relating thereto as they may think interesting or useful to the state; which report shall be communicated by the governor to the next succeeding session of the state legislature. Said trustees shall receive no salary for their services as such from the state, but shall be allowed all necessary expenses incurred in the discharge of their duties.

Sec. 11. The board of trustees shall have a regular meeting once every three months, at such time and place as they may direct; special meetings may be called by the president of said board in all cases where it becomes necessary for such a meeting.

Sec. 12. The superintendent, before entering upon the duties of his office, shall take an oath faithfully to discharge the same, and execute a bond, with sureties to be approved by the board, in a sum to be fixed by the board, conditioned for the faithful performance of all his duties as such superintendent. He shall be a resident at the institution, and shall be ex-officio the secretary of the board, taking charge of all books and papers. He shall have charge of the land, buildings, furniture, apparatus, tools, stock, provisions, and every other species of property belonging to the institution, subject to the direction and control of said board, and shall account to the board in such manner as they may require for all property intrusted to him, and all moneys received by him, from whatever source, shall be deposited with the treasurer. His books shall at all times be open to the inspection of the board, who shall at least once in every three months carefully examine the same, and all accounts, vouchers, documents connected therewith, and make a report of the result of such examination in a book provided for the pur-

pose. He shall have charge of the inmates of said institution; he shall discipline, govern, instruct, employ, and use his best efforts to reform the children and youth under his care, and shall at all times be subject to removal by the board for incapacity, cruelty, negligence, immorality, or any other good cause.

Sec. 13. The treasurer, before entering upon the duties of his office, shall take an oath faithfully to discharge the same, and shall execute a bond to the people of California, with sureties, to be approved by said board, in at least double the sum of money for which he may be responsible as treasurer, conditioned for the faithful performance of all his duties as such treasurer; he shall take charge of all the funds of the institution, receiving the same and disbursing them on the written order of the superintendent, and shall account to the board, in such a manner as they may require, for all funds intrusted to him, from whatever source. His books shall at all times be open to the inspection of the board and superintendent, who shall at least once in every six months carefully examine the same, and all the accounts, vouchers, and documents connected therewith, and make a report of the result of such examinations. Such treasurer must be a citizen of Los Angeles County, and shall receive for his services a salary of six hundred dollars per annum.

Sec. 14. Said board of trustees shall arrange the building or buildings to be used for said school, and the grounds about the same, so that a portion thereof may be used for the proper confinement, care, and education of the male inmates, and the remaining portion for the proper confinement, care, and education of the female inmates, and to the absolute exclusion of all communication of any kind or character between the sexes. [Amendment, approved March 23, 1893. Stats. 1893, p. 329. In effect immediately.]

Sec. 15. Whenever said institution shall have been so far completed as to properly admit of the reception of inmates therein, the governor shall make due proclama-



tion of that fact; and thereafter it shall be lawful for said board of trustees to receive into its care and guardianship minors between the ages of eight and eighteen years committed to its custody, as hereinafter provided. [Amendment, approved March 23, 1893. Stats. 1893, p. 329. In effect immediately.]

Sec. 16. When any boy between the ages of seven and sixteen or any girl between the ages of seven and eighteen years shall be found guilty by a superior court of any county in the state, and who in the opinion of such court would be a fit subject for commitment to the said school, it shall be lawful for the said court to suspend judgment or sentence (except when the penalty is life imprisonment or death), and to commit such minor to the said school until any such male minor shall have reached the age of sixteen years and any such female minor shall have reached the age of twenty-one years unless sooner discharged by law or as in this act provided; but no minor who is under the age of seven years or who is suffering from any contagious, infectious or other disease which would probably endanger the lives or health of the other inmates of said school, shall be committed to said school; and further provided that no such minor shall be committed to said school unless the judge of such court shall be fully satisfied that the mental and physical condition and qualifications of said minor are such as to render it probable that such minor will be benefited by the reformatory and educational discipline of said school. The board of trustees of said school shall have authority to make rules reducing, as the reward for good conduct, the time for which such person or persons have been committed. It shall be the duty of all courts committing any minor to such school to certify to the superintendent thereof the age of the person so committed, as nearly as can be ascertained by testimony taken under oath before such court or in such manner as the court may direct. [Am'd. 1905, p. 80.]

Sec. 16a. Any child between seven and fourteen years of age, who willfully and habitually absents himself or herself from school contrary to the provisions of an act entitled an act to enforce the educational rights of children and pro-



viding penalties for violation of the act, approved March 24, 1903, may be committed to the Whittier State School by any superior court judge on the complaint of any peace officer, teacher, parent, guardian or other person, under the same conditions and in the same manner as provided in section sixteen of this act. [New section, 1990, p. 81.]

Sec. 16b. Any child who comes under the provisions of an act entitled an act defining and providing for the control, protection and treatment of dependent and delinquent children; prescribing the powers and duties of courts with respect thereto; providing for the appointment of probation officers, and prescribing their duties and powers; providing for the separation of children from adults when confined in jails or other institutions; providing for the appointment of boards to investigate the qualifications of organizations receiving children under this act and prescribing the duties of such boards; and providing what proceedings under this act shall be admissible in evidence, approved February 26th, 1903, may be committed to the Whittier State School by any superior judge under the same conditions and in the same manner as provided in section sixteen of this act. [Am'd. 1905, p. 81.]

Sec. 16e. It shall be lawful for the board, whenever it may deem any inmate of said institution to have been so far reformed as to justify his discharge, to give him an honorable dismissal, and to cause an entry of the reasons for such dismissal to be made in the book of records prepared for that purpose. All persons thus honorably dismissed, and all those who shall have served the full term of their respective sentences, shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which they may have been committed. Upon the final discharge of any inmate, as in this section provided, the superintendent, where any sentence or judgment was previously suspended, as mentioned in section sixteen of this act, shall immediately certify such discharge, in writing, and shall transmit the said certificate to the court by which such person was committed, and said court shall thereupon dismiss the accusation, and the action pending against said person. [Am'd. 1905, p. 82.]

Sec. 16d. The board shall have authority also to issue certificates of conditional dismissal and parole to any worthy

minor confined in the institution, on the following conditions: It may bind such minor by articles of indenture to any suitable person who will engage to educate him, and to instruct him in some useful art or trade, or it may return him to his parents, or it may place him under the care of any reputable person who is a citizen and a resident of this state, after such person, parent, guardian or resident citizen shall have become bound to the said board, with good and sufficient sureties, conditioned on the proper custody, care, education, and moral and industrial training of the said paroled minor. The time of such conditional release shall be made subject to good behavior and continued reformation on the part of the person thus paroled. Any minor who violates his parole, or who becomes habitually disobedient and incorrigible, may be returned to the said school to serve the unexpired term of his sentence, on complaint of his guardian and the written requisition of the superintendent of said school. Every paroled minor who properly observes and obeys the condition of his parole until the date of the expiration of his term of commitment shall be entitled to all the benefits and immunities in this act provided. If at any time it shall be determined by the board of trustees of said school, to its satisfaction, that any minor who may have been committed to the care or guardianship of any third person, as in this section previously provided, is not being properly treated or cared for, according to the terms and conditions under which such minor was intrusted to said third person, then by a resolution of the said board entered upon its minutes, and upon the requisition of the superintendent of said institution issued thereon, the said minor may be recalled to said school, and he or she shall be released from all obligations to such third person. And in such case the said board shall have the right to maintain all necessary actions or proceedings against the said third person and his bondsmen to recover the penalty in whatever bonds may be given by reason of the failure of said third person to perform the conditions under which said minor was intrusted to his care; and in the event of minors who may have been bound out by the said board of trustees by articles of indenture, the said board shall institute and maintain all proper actions and proceedings to cancel and

Sec. 16e. Any male member who shall, during the time of annul said articles of indenture. [Stats. 1905, p. 82.]

his commitment, be found incorrigible, who shall be in the judgment of the board of trustees of said school determined to be an improper person for detention in said school, may be returned to the court from which such minor was committed, and upon written complaint of the said board, attested by the superintendent of said school, and filed with the original complaint, it shall be the duty of said court to commit said male minor to the Preston School of Industry for such judgment and sentence as would have been lawful at the time when the said minor was first committed to the said school. [Am'd. 1905, p. 82.]

Sec. 17. If any accusation of the commission of any crime shall be made against any male minor under the age of sixteen years or any female minor under the age of eighteen years before any grand jury and the charge appears to be supported by evidence sufficient to put the accused upon trial, the grand jury may, in their discretion, instead of finding an indictment against the accused, return to the superior court, as it appears to them that the accused is a suitable person to be committed to the court and guardianship of said institution. The court may thereupon order such commitment, if satisfied from the evidence that such commitment ought to be made, which examination may be waived by the parent or guardian of such minor. [Am'd. 1905, p. 82.]

Sec. 18. If any male minor between the ages of seven and sixteen or any female minor between the ages of seven and eighteen shall be arraigned for trial in any court having competent jurisdiction, on charge of any violation of any criminal law of this state (except for the commission of a capital offense or attempt to commit a capital offense), the judge may, in his discretion, with the consent of the accused, arrest at any stage of the cause any further proceedings on the part of the prosecution and commit the accused to the care and guardianship of this institution. [Am'd. 1905, p. 82.]

Sec. 19. All male minors between the ages of seven and sixteen, and all female minors between the ages of seven and eighteen who may be accused of any offense punishable by imprisonment, shall, with a view to the question whether they ought to be committed to said institution, be entitled to a private examination and trial before a court having competent jurisdiction, to which only the parties to the case and the parent or guardian of the accused and their

attorneys shall be admitted, unless one of the parents, the guardian or other legal representative of the minor demand a public trial; on such case the proceedings shall be in the usual manner. [Am'd. 1905. p. 82.]

The amendatory act of March 7, 1905, contains the following section:

Sec. 10. Within sixty days after the passage of this act and its approval by the governor it shall be the duty of the board of trustees of the Whittier State School to cause all male inmates of said school who are over sixteen years of age to be committed to the Preston School of Industry. [Statute March 7, 1905, statute 1905, p. 83.]

Sec. 20. It shall also be lawful for the said board of trustees, under such rules as they may prescribe, to receive into the care and guardianship of said institution, whenever it may be convenient so to do, minors between the ages of eight and eighteen years, committed to custody in any of the following modes:

1. Minors committed by any judge of a superior court of this state, on the complaint in writing, filed and due proof thereof made by the parent or guardian of such minor, showing that by reason of the incorrigible and vicious conduct or nature of such minor he is beyond the control and power of such parent or guardian, and that from a regard for the future welfare of such minor and the protection of society it appears that such minor should be placed in the care of such institution.

2. Minors committed by any judge of the superior court of this state where complaint in writing has been filed and due proof of the same has been made showing that such minor is a proper subject for the care and guardianship of such institution in consequence of vagrancy or of incorrigible or vicious conduct, in cases where, from moral depravity or otherwise, the parent or guardian having the control of such minor is incapable of exercising or is unwilling to exercise the proper care or discipline over such minor, or in cases where such minor has no parent, guardian, or other protector.

3. Minors committed by any judge of the superior court of this state where complaint in writing has been filed and due proof of the same has been made by the mother or guardian, when the father is dead, or has abandoned his

family, or is an habitual drunkard, or does not provide for the support of such minor, and it appears that such minor is destitute of a suitable home and of adequate means of obtaining an honest living, or is in danger of being brought up to lead an idle and immoral life, and where such mother or guardian is unable to provide the proper support and care for such minor. [Amendment, approved March 23, 1893. Stats. 1893, p. 332. In effect immediately.]

Sec. 21. Before conveying minors to said institution, the person or persons having charge of said minors shall ascertain from the superintendent whether they can be received; if they cannot, then the case of such minors shall be disposed of as if this act had never been passed and no proceedings taken under it. [Amendments, approved March 23, 1893. Stats. 1893, p. 333. In effect immediately.]

Sec. 22. In all cases where the commitment is executed by the official person, whose proceedings are usually evidenced by the record, or where the occasion of the commitment is a criminal charge or conviction against the infant, no other record shall be made (unless demanded by the infant, his parent, or guardian) than that, in substance, such infant (naming him), who on a day therein named was of the age of — years, having been brought before said court or officer, and it having been ascertained by the testimony of the witnesses that such infant was a suitable person to be committed to the instruction and discipline of such institution, and in case of conviction for crime (naming the offense), therefore such infant was ordered to be committed to said institution.

Sec. 23. Upon the discharge of any person committed to said school, the superintendent thereof, under such regulations and restrictions as the said board of trustees may prescribe, may provide such person with suitable clothing and five dollars in money, and procure transportation for such person to his or her home, if resident in this state, or to the county to which he or she may have been committed, at his or her option. [Amendment, approved March 23, 1893. Stats. 1893, p. 333. In effect immediately.]

Sec. 24. Said board of trustees shall, with the approval of the governor, estimate and determine, as near as may

be, the actual expenses per month of keeping and taking care of each minor committed to said institution, not including the use of grounds and buildings, and shall include a statement of such estimated price in each biennial report to the governor. When any minor is committed to said institution at the instance of his or her parent or guardian, or other protector, the cost of keeping said minor, including the cost of transporting to and from the institution, shall be wholly paid by such parent or guardian; unless, by reason of the poverty of such parent or guardian or other good cause, said board of trustees shall otherwise order and direct; in such case, such expenses, including the cost of transportation, shall be borne one-half by the county from which such minor is committed, and the remaining one-half shall be borne by the state; and in every case where a minor who has no parent, guardian, or other protector, who is able to pay the cost of transportation to and cost of maintenance at said school, is committed thereto, such cost of transportation and maintenance of such minor shall be borne, one-half by the state and the other half by the county from which said minor is committed. The expense which any county may be liable to pay on account of any minor committed to said institution under the provisions of this act shall be paid by the board of supervisors into the state treasury on a certified and detailed statement as to the amount due therefor from such county being furnished to the auditor of the county by said superintendent; but in no case shall the amount charged to any county for the keeping of any minor exceed one-half of the estimated cost to the state of his or her support, exclusive of the use of the permanent property of the institution. All moneys paid by such counties under the provisions of this section into the state treasury shall be placed in a fund, to be designated and known as the "Whittier Reform School fund," for the use of said institution; provided, however, that no order shall be made by said board of trustees charging

any county with one-half of the cost of keeping in the institution any infant committed at the instance of his or her parent or guardian, or other protector, unless a certificate in writing is first produced, signed by the president of the board of supervisors of such county, setting forth that the case is one in which the expense should be charged to the state and county, and also setting forth the reasons for their being so charged. [Amendment, approved March 23, 1893. Stats. 1893, 333. In effect immediately.]

Sec. 25. Immediately after the governor shall make proclamation that said institution is ready for the reception of inmates, the board of trustees shall make the estimated actual expense per month of keeping and taking care of the infants, as required under section twenty-four, which estimate shall control in such matters until the first biennial report of said board is made.

Sec. 26. If any person procure the escape of any person committed to the school, or advise or connive at, aid, or assist in such escape, or conceal any such person so committed after such escape, he shall, upon conviction thereof in any superior court, be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not less than two months nor more than one year, or by both such fine and imprisonment; or, if such person so convicted be under the age of sixteen years then he shall be sentenced to the school, as in this act provided. [Amendment, approved March 23, 1893. Stats. 1893, 334. In effect immediately.]

Sec. 27. If any parent, or guardian, or master to whom a minor has been apprenticed, or any person occupying the position of parent, protector, or guardian, in fact or in reality, by blood or marriage, not more remote than first cousin to such minor, shall feel aggrieved by such commitment to such institution when such commitment has been made under section twenty of this act, he may make written application to the board of trustees of the insti-



tution for the discharge of such minor, which application shall be filed with the superintendent, who shall inform the trustees thereof, and the same shall be heard and determined by such trustees at such time and place as they shall appoint for that purpose, not later than the next regular meeting of the board. Such application shall state the grounds of the applicant's claim to the custody of the minor, and the reasons for claiming such custody. Within ten days after the hearing said application, the trustees shall make and announce their opinion thereon, and if they shall be of the opinion that the welfare of such minor would be promoted by granting the application, they shall make an order to that effect; otherwise, they shall deny the application. The applicant may, upon the denial of his application, by first giving security for the payment of all costs (the security to be approved by the clerk of the proper court) commence an action in the superior court of the county in which the institution may be situated, for the recovery of the custody of such minor, against the trustees of such institution. The complaint in said action shall state the fact and manner of the minor's commitment to the said institution, the making of the applicant's application to the trustees for the custody of such minor, and the overruling of such application by such trustees, as well as the ground upon which the applicant relies for the recovery of the custody of such minor. Said action shall be prosecuted in like manner as other civil actions, and the cost thereof shall be paid by the applicant without reference to the result of the action, unless the court shall state in the judgment that the refusal of the trustees to grant the application of the applicant was plainly unreasonable, or that the original commitment was manifestly improper and unnecessary. [Amendment, approved March 23, 1893. Stats. 1893, p. 334. In effect immediately.]

Sec. 28. It shall be the duty of the sheriff of any county wherein an order is made or approved by a superior judge committing any minor to said school, to execute any and all writs of commitment issued or approved by said judge, and to receive as compensation therefor such fees as are



now or may hereafter be provided by law for the transportation of prisoners to the state prison; provided, that in all cases where the commitment shall be made under section twenty of this act, the parent, guardian, or other protector of such minor may, at his option, and in all cases where he is liable, or where the estate of such minor is sufficient, execute said writ of commitment, after having been duly sworn therefor, with like powers and with like effect as the sheriff would possess in such case, but without expense to the said state; and further provided, that in the case of minor females committed to said school, and there is no parent, guardian, or other protector of such minor, who, in the opinion of the court, is a proper person to safely conduct such female to said school, that then, in such case, the court shall appoint some suitable woman of satisfactory character and discretion, who shall take the custody of such minor female after her said commitment, and shall forthwith deliver her to said school, and be entitled to the same compensation therefor as is otherwise provided to be paid to the sheriff in all cases where, if such minor were a boy and were by a sheriff delivered to said school, he, the said sheriff, would be entitled to receive compensation, under the terms of this act. [Amendment, approved March 23, 1893. Stats. 1893, 1. 335. In effect immediately.]

Sec. 29. In all cases where an infant has been committed to said school for any of the causes mentioned in section twenty of this act, and such minor, at the time of his commitment or afterwards, and during his term of confinement at said school, succeeds to any estate which is of sufficient value to cover his expenses to and from and while at said school, the same shall become subject to such expense; and the said superior court shall, by a proper order therein entered, cause the parent or guardian to sell so much of said minor's estate (there not being sufficient money) to pay such expenses. In each case the proceedings thereon shall be similar to those required of guardians in ordinary sales of the property of wards. When any money is realized by virtue of any such sales, the court, by proper order, shall cause the same, or a sufficient amount thereof, to be paid

to the trustees of such institution; or in case any expense of said minor has been borne already by the state or county, then such court shall order said county and state to be fully reimbursed for said expense, by causing a sufficient amount therefor to be placed in the state and county treasury. [Amendment, approved March 23, 1893. Stats. 1893, p. 336. In effect immediately.]

Sec. 30. The said board of trustees shall examine, audit, and allow the demands arising under the terms of the aforesaid act and the amendments thereto, and the state controller shall thereupon draw his warrants therefor, payable out of the proper fund, and the state treasurer is hereby ordered to pay such warrants.

All acts or parts of acts in conflict with this act are hereby repealed. [Amendment, approved March 23, 1893. Stats. 1893, p. 336. In effect immediately.]

Sec. 31. This act shall take effect and be in force from and after its passage.

An act relating to commitments to the state school at Whittier and to the Preston school of industry; fixing the authority to examine and commit to such schools with the superior court judges of the counties, and fixing the responsibilities from which commitments are made to the state for maintenance of the persons committed therefrom; providing for the manner of payment thereof, and fixing the responsibility of the parents to the counties from which their children are committed.

[Approved March 26, 1895. Stats. 1895, 122.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. The superior judge of any county, and no other judicial officer, shall have power to examine, discharge, or commit any offender either to the Whittier state school or to the Preston school of industry; provided,

that the superior judge shall determine whether or not the parent or guardian of any minor committed to the Whittier state school or to the Preston school of industry is able to pay to the county in which the commitment is made for the maintenance of such minor during the term of such commitment; and when the superior judge shall determine that said parent or guardian has the ability to pay as aforesaid for the maintenance of such minor during the term of such confinement, the parent or parents or guardian shall pay into the treasury of such county the sum of eleven dollars per month in advance; and in case of the failure to pay the same as herein provided, it shall be the duty of the district attorney of such county to proceed to collect the amount from such parent, parents, or guardian in the manner that other indebtedness against the county is collected.

Sec. 2. For each and every person hereafter committed to either the Whittier state school or the Preston school of industry, the county from which the commitment is made shall pay into the state treasury the sum of one hundred and thirty-two dollars per annum, and at that rate for each fraction of a year.

Sec. 3. It is hereby made the duty of the clerk of the superior court of the county from which such commitment is made, to certify to the county auditor the name, age, and date of commitment of each person committed by the superior judge thereof, and the amount due to the state from the county by reason of such commitments, and before the first day of May and December of each and every year to file with the treasurer of the county a statement of the number of commitments, with the date thereof, and the amount due from the county by reason of such commitments, to the state treasurer; and it is further made the duty of the county treasurer, during the settlement or at the time of the settlement with the state during the month of May and December of each year, to pay to the state treasurer, through the state controller, the amount so found to be due

to the state by reason of commitments to the state schools as herein provided.

Sec. 4. The superintendent of the state school at Whittier and the Preston school of industry are hereby required to transmit to the state treasurer a statement of all commitments to their respective institutions, showing the name of the person committed, the date of the commitment, and the county from which the commitment is made, and the amount due to the state from the county by reason of such commitments; said statement to be made quarterly, as follows: On or before the first day of January, the first day of April, the first day of July, and the first day of October of each year; and it is hereby made the duty of the controller of state to add the amounts due to the state from said counties such sum as may be shown to be due by reason of commitments to such schools, as in section two of this act provided.

Sec. 5. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 6. This act shall take effect immediately.

An act to prevent evil-disposed persons from coming upon the grounds of the Whittier state school at Whittier, California, or the Preston school of industry at Ione.

[Approved March 26, 1895. Stats. 1895, 92.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. Any person who shall come upon the grounds of the Whittier state school at Whittier, or Preston school of industry at Ione, or any of the grounds adjacent thereunto where inmates are employed, and leave or deposit where inmates may have access thereunto, any guns, pistols, knives, or other deadly weapons, or any explosive of any kind whatsoever, shall be guilty of felony, and upon con-

viction thereof shall be punished by imprisonment in the state prison for a term of not to exceed three years.

Sec. 2. Any person who shall come upon the grounds of the Whittier state school at Whittier, or Preston school of industry at Ione, or any of the grounds adjacent thereto where inmates are employed, and leave or deposit where inmates may have access thereto, any whisky, cigars, cigarettes, tobacco, or any other narcotic or stimulant, or who shall furnish to any of the inmates of said school any of the above-named articles, shall be guilty of a misdemeanor.

Sec. 3. Any person having been previously convicted of a felony, and who has been confined in either of the state prisons of this state, who shall come upon the grounds of the Whittier state school, or Preston school of industry at Ione, or communicate, or attempt to communicate, with any of the inmates of said institution without the consent of the superintendents, or other officers in charge of said schools, shall be guilty of a felony, and upon conviction thereof shall be punished by confinement in either of the state prisons of this state for not more than three years.

Sec. 4. Any tramp, vagrant, or person who is a known associate of thieves, who shall come upon the grounds of the Whittier state school or Preston school of industry at Ione, or grounds adjacent thereto, and communicate with any of the inmates of said schools, without the consent of the superintendents thereof, or who shall visit or communicate with any paroled pupil of said school with a view to induce him to violate the conditions of his parole, or who shall induce, by threats, intimidation, or persuasion, such paroled pupil to leave the guardian under whom he has been placed by the superintendents of the Whittier state school, or Preston school of Ione, shall be guilty of a misdemeanor.

Sec. 5. Any person who shall deliver, or agree to deliver, any literature, letters, or any reading matter whatsoever to any of the pupils of the Whittier state school,

or Preston school of **industry** at Lone, without the same passing through the hands of the superintendents of said schools, or other officer designated by him for the purpose of receiving and examining such literature, letters, or reading matter, shall be guilty of a misdemeanor.

This act shall take effect immediately.

An act to provide for the improvement of the reform school at Whittier, California, for juvenile offenders, and make an appropriation for the same.

[Approved April 6, 1891. Stats. 1901, 484.]

The act appropriated \$120,400 for the purpose specified.

An act to provide for additional improvements at the reform school for juvenile offenders, located at Whittier, in the county of Los Angeles, and state of California, and to make an appropriation for the same.

[Approved March 23, 1893. Stats. 1893, 296.]

The act appropriated \$100,000 for the purpose specified.

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## SEDUCTION.

An act to punish seduction.

[Approved March 1, 1872. Stats. 1871-2, p. 184.]

Section 1. Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame, or of assignation, or elsewhere, for the purpose of prostitution, and every person who aids or assists in such abduction for such purpose, and every person who by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the state prison not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

## SHERIFFS.

An act to allow compensation to sheriffs for conveying prisoners to the state prisons, and insane persons to the insane asylums.

[Approved March 14, 1885. Stats. 1885, 126. Amended 1889, 200.]

Section 1. There shall be allowed by the state board of examiners to the sheriff, to be retained by him for his own use for delivering a prisoner to either of the state prisons, actual expenses and five dollars per diem for the time necessarily consumed in delivering such prisoner. [Amendment, approved March 15, 1889. Stats. 1889, 200.]

Sec. 2. There shall be allowed by the state board of examiners to the sheriff, to be retained by him for his own use, for delivering any insane person to either of the insane asylums, his actual expenses and the same per diem as is allowed in section one of this act. [Amendment, approved March 15, 1889. Stats. 1889, 200.]

Sec. 3. The sheriff shall be allowed and is entitled to receive and retain for his own use, the same compensation and expenses for all like services mentioned in sections one and two of this act, rendered by him since the fourteenth day of March, 1885. [Amendment, approved March 15, 1889. Stats. 1889, 200.]

Sec. 4. This act shall take effect and be in force from and after its passage. [Amendment, approved March 15, 1889. Stats. 1889, 200.]

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SHIPPING.

See Buoys and Beacons.

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STATE PRISONS.

An act to regulate and govern the state prisons of California.

[Approved March 19, 1889; 1889, 404.]

Section 1. The state prisons of this state shall be known as the state prison at San Quentin, which shall have an

official staff conforming to the laws of the state in relation to state prisons; and the state prison at Folsom, which shall have a similar staff and be similarly organized, and all the finances and accounts of the two prisons shall be kept separate and apart from each other.

Sec. 2. For the government and management of the California state prisons, there shall be appointed by the governor, by and under the advice of the senate, five directors, who shall hold their office for the term of ten years, from and after the date of such appointment; such appointments to be made as vacancies occur in the board as it now exists. In case of death or resignation of a director, his successor shall be appointed to fill the unexpired term of such director by the governor, by and with the advice of the senate. Each director shall subscribe an oath of office, which shall be indorsed on his commission, within ten days after receiving written notice of such appointment, and a duplicate of such oath shall also be filed with the secretary of state.

Sec. 3. At the first meeting of the board of directors in the year eighteen hundred and ninety, and annually thereafter, they shall elect one of their members president of the board, whose duty it shall be to preside at the meeting of the board, and to perform such other duties as may, from time to time, be prescribed by the rules and regulations for the government of the board.

Sec. 4. Three members of the board shall constitute a quorum for the transaction of all business, but no order of the board shall be valid unless concurred in by three or more members.

Sec. 5. It shall be the duty of the directors to determine the necessary officers and employees of the prisons other than those of the wardens and clerks, specifying their duties severally, and fixing their salaries; to prescribe rules and regulations for the government of the prisons, and to revise and change the same from time to time as circum-



stances may require, and to board and lodge the officers and employees, or allow them a money commutation in lieu thereof; provided, the warden may make temporary rules, in cases of emergency, to remain in force until the succeeding meeting of the board. At least three of the directors shall visit the prisons once in each month, and oftener if necessary, at such time as they may select. The directors shall audit all claims for supplies, services, and expenses of officers and employees, and all other demands against the prison.

Second—To enter or cause to be entered on the journal by the clerks all official acts which shall be signed by at least three members of the board.

Third—On or before the first day of December of each year to report to the governor the condition of the prisons, together with detailed statements of receipts and expenditures, and such suggestions concerning the prisoners as may appear to be necessary and expedient.

Fourth—The board of directors shall also adopt rules and regulations not inconsistent with the constitution and the laws of the state of California for the government of the board, and may change the same at their pleasure.

Fifth—The board of directors shall have power to establish an office in San Francisco, and employ a secretary.

Sec. 6. The directors shall appoint a warden for each prison, who shall take and subscribe an oath or affirmation faithfully to discharge the duties of his office, as prescribed by law, and by the rules and regulations of the board of directors, and to enter into a bond to the state of California, in the sum of twenty-five thousand dollars, with two or more sufficient sureties, to be approved by the directors and the attorney-general of the state, conditioned to the faithful performance of such duties as such officer aforesaid, and he shall hold his office four years after such appointment; the first appointments after the adoption of this act to take place at the expiration of the present term of of-

fice of the present incumbents thereof, or when such office becomes vacant.

Sec. 7. The wardens shall reside at the state prisons to which they are respectively assigned, in houses provided and furnished at the expense of the state, as may be ordered by the board of directors, and it shall be their duty—

First—To fill all subordinate positions that may be created by order of the board of directors by appointment of suitable persons thereto.

Second—Under the order and direction of the board to prosecute all suits at law or in equity that may be necessary to protect the rights of the state in matters or property connected with the prisons and their management, such suits to be prosecuted in the name of the board of state prison directors.

Third—To supervise the government, discipline, and police of the prisons, and to enforce all orders and regulations of the board in respect to such prisons. A registry of convicts shall be kept by him, and in which shall be entered the name of each convict, the crime of which he is convicted, the period of his sentence, from what county sentenced, by what court sentenced, his nativity, to what degree educated, at what institution and under what system, an accurate description of his person, and whether he has been previously confined in a state prison in this or any other state, and if so, when and how he was discharged.

Fourth—He shall report to the governor, before the twentieth of each month, the names of all prisoners whose terms are about to expire, giving in such report the terms of their sentences, the date of imprisonment, the amount of total credits to the date of such report, and the date when their service would expire by limitation of sentence.

Fifth—To perform such other duties as may be prescribed by the board of directors.

Sec. 8. The board of directors shall appoint a clerk for each prison, who shall take an oath of office, and enter

into a bond to the state, with sureties satisfactory to the board, in the sum of ten thousand dollars, conditioned that they will faithfully discharge the duties required of them. The clerks shall hold their office for the period of four years after such appointments; the first appointments after the adoption of this act to take place at the expiration of the present term of office of the present incumbents thereof, or when such office becomes vacant.

Sec. 9. The clerks shall keep the accounts of the prisons to which they are severally appointed in such manner as to exhibit clearly all its financial transactions; and the clerks shall perform such other duties as may from time to time be required of them by the board of directors.

Sec. 10. No person shall be appointed to any office by the wardens, or be employed in the prisons on behalf of the state, who is a contractor or agent, or who is interested, directly or indirectly, in any business carried on therein; and no male person who is not a qualified elector of the state of California shall be appointed by the wardens to any office in or about the prisons, nor shall any be appointed or employed by virtue of this act who is in the habit of intemperate use of liquors, and a single act of intemperance shall justify his discharge or removal, and it shall be the duty of such warden to discharge such person.

Sec. 11. Wardens and clerks may be removed by the board of directors at any time for misconduct, incompetency, or neglect of duty; and all other officers and employees, may be removed at any time, at the pleasure of the wardens.

Sec. 12. The wardens shall receive a salary of not less than twenty-four hundred dollars, and not to exceed three thousand dollars, per annum, in the discretion of the board of directors.

Sec. 13. The clerks shall receive a salary not to exceed eighteen hundred dollars per annum, and all other officers and employees shall receive such compensation as the directors may deem just and equitable in each case.

Sec. 14. The board of directors are hereby authorized and required to contract for provisions, clothing, medicines, forage, fuel, and all other staple supplies, needed for the support of the prisons for any period of time, not exceeding one year, and such contracts shall be limited to bona fide dealers in the several classes of articles contracted for. Contracts for such articles as the board may desire to contract for shall be given to the lowest bidder, at a public letting thereof, if the price bid is a fair and reasonable one, and not greater than the usual market value and prices. Each bid shall be accompanied by such security as the board may require, conditional upon the bidder entering into a contract upon the terms of his bid, on notice of the acceptance thereof, and furnishing a penal bond, with good and sufficient sureties, in such sum as the board may require, and to their satisfaction, that he will faithfully perform his contract. If the proper officer of the prison reject any article as not complying with the contract, or if a bidder fail to furnish the articles awarded to him when required, the proper officer of the prison may buy other articles of the kind rejected or called for, in the open market, and deduct the price thereof, over the contract price, from the amount due to the bidder, or charge the same up against him. Notice of the time, place, and conditions of the letting of contracts shall be given for at least two consecutive weeks in two newspapers printed and published in the city and county of San Francisco, and in one newspaper printed and published in the city of Sacramento, and in the county where the prison to be supplied is situated. If all the bids made at such letting are deemed unreasonably high, the board may, in their discretion, decline to contract, and may again advertise, for such time and in such papers as they see proper, for proposals, and may so continue to renew the advertisement until satisfactory contracts are made; and in the mean time the board may contract with any one whose offer is regarded as just and equitable, or may purchase in the open market. No bid shall be accepted, nor a contract entered into in pursuance thereof, when such bid is higher than any other bid at the same letting for the same class or schedule of articles, quality considered, and when a contract can be had at such lower bid. When two or more bids for the same article or articles are equal in amount, the board

may select the one which, all things considered, may by them be thought best for the interest of the state, or they may divide the contract between the bidders, as in their judgment may seem proper and right. The board shall have power to let a contract in the aggregate, or they may segregate the items, and enter into a contract with the bidder or bidders who may bid lowest on the several articles. The board shall have the power to reject the bid of any person who had a prior contract, and who had not, in the opinion of the board, faithfully complied therewith.

Sec. 15. All moneys received or collected by the warden of San Quentin prison shall be reported to the state controller on the first day of each and every month in such form as the controller may require, and at the same time shall be paid into the general fund of the state treasury on the order of the controller, except so much thereof as shall be necessary to be paid into the jute revolving fund, as required by the provisions of an act of the legislature approved March 9th, 1885, and amended March 16th, 1889. All moneys received or collected by the warden of Folsom prison shall be reported to the state controller on the first day of each and every month in such form as the controller may require, and at the same time shall be paid into the state treasury to the credit of the Folsom state prison fund, excepting so much thereof as may be necessary to pay the expenses and money allowed discharged prisoners under the provisions of this act. The warden shall require vouchers for all moneys by them expended and safely keep the same on file in their respective offices at the prisons. For all sums of money required to be paid other than for the uses above named, as well as for said use when there is not sufficient money in the hands of the warden, drafts shall be drawn on the controller of state, signed by at least three of the directors, and the controller of state shall draw his warrant on the state treasurer, who shall pay the same out of any moneys belonging to the state prison fund, or appropriated for the use or support of the state prisons. The amount of all money retained by the wardens and the aggregate amount paid out shall be reported quarterly to the controller of state, and the proper entries shall be made on the controllers books. Am'd. 1905, p. 724.

Sec. 16. All revenues of the prisons, unless herein otherwise provided, shall be paid to the wardens, who alone are authorized to receipt for the same and discharge from liability. When any sum of money is paid to the wardens, they shall cause the same to be properly entered on the books by the clerks.

Sec. 17. On payment of any moneys into the state treasury, as provided in this act, the wardens and state treasurer shall report to the controller of state the amount so paid, and the state treasurer shall give the wardens a receipt therefor, which receipt shall be filed with the controller. The wardens shall report to the controller of state the amount of money paid into said treasury by them during each month, and shall also report to said controller of state the amounts received and disbursed by them every three months, and during the period for which such report shall be made, which quarterly report shall be signed by the warden and at least three of the directors.

Sec. 18. All convicts may be employed by authority of the board of directors, under charge of the wardens respectively, and such skilled foremen as he may deem necessary in the performance of work for the state, or in the manufacture of any article or articles for the state, or the manufacture of which is sanctioned by law. At San Quentin no articles shall be manufactured for sale except jute fabrics. At Folsom after the completion of the dam and canal the board may commence the erection of structures for jute manufacturing purposes. The board of directors are hereby authorized to purchase from time to time such tools, machinery, and materials, and to direct the employment of such skilled formen as may be necessary to carry out the provisions of this section, and to dispose of the articles manufactured, and not needed by the state, for cash, at private sale, in such manner as provided by law.

Sec. 19. In the treatment of the prisoners, the following general rules shall be observed: Each convict shall be provided with a bed of straw, or other suitable material, and sufficient covering of blankets, and shall be supplied with garments of coarse substantial material, of distinctive manufacture, and with sufficient plain and wholesome food of such variety as may be conducive to good health.

Second—No punishment shall be inflicted except by the order and under the direction of the wardens.

Third—The warden shall keep a correct account of all money and valuables upon the prisoner when delivered at the prison, and shall pay the amount, or the proceeds thereof, or return the same to the convict when discharged, or to his legal representative in case of his death; and in the case of the death of such convict without being released, if no legal representative shall demand such property within five years, the same shall be paid into the state prison fund.

Fourth—The rules and regulations prescribing the duties and obligations of the prisoners shall be printed and hung up in each cell and shop.

Fifth—Each convict, when he leaves the prison, shall be supplied with the money taken from him when he entered, and which he has not disposed of, together with any sum which may have been earned by him for his own account, allowed to him by the state for good conduct or diligent labor, or may have been presented to him from any source; and, in case the prisoner has not funds sufficient for present purposes, he shall be furnished with five dollars in money, a suit of clothes costing not more than ten dollars, and by the cheapest route to the place where sentenced from, if the prisoner desires to return there, or to any other place of the same cost; and he shall be entitled, if he so elect, to immunity from having his hair cut, or from being shaved, for three calendar months immediately prior to his discharge. It shall not be lawful for the officers of the prison to furnish, or permit to be furnished, to any one, for publication,



the name of any prisoner about to be discharged. When the warden, and such other officers as may be designated by the directors to act with him in such cases, shall be of opinion that any convict is insane, they shall make proper examination, and if they remain of the opinion that such person is insane, the warden shall certify the fact to the superintendent of one of the state asylums for the insane, and shall forthwith send such convict to said asylum for care and treatment. If at the expiration of the term of sentence, the insane convict is still in the insane asylum, he shall be allowed to remain there until discharged cured. It shall be the duty of the warden, also, to send to the directors a copy of such certificate, and thereafter a statement as to his subsequent acts regarding the said insane convict. And it shall be the duty of the superintendent of the insane asylum to receive such insane convict and keep him until cured. It shall be his duty, upon receipt of such insane convict, to notify the directors of the fact, giving name, date, and where from, and from whose hands received. When, in the opinion of the superintendent, such insane convict is cured of insanity, it shall be his duty to immediately notify the directors thereof; and it shall be his duty also to notify the warden of the prison from whence he was received, who shall immediately send for, take, and receive the said convict back into the prison, the time passed at the asylum counting as a part of such convict's sentence. Before discharging any convict who may be insane at the time of the expiration of his sentence, the warden shall first give notice, in writing, to a judge of a superior court of the county in which the state prison may be located, over which he has control, of the fact of such insanity; whereupon said court shall forthwith make an order, and deliver the same to the sheriff of said county, commanding him to remove such insane convict and take him before said court. Upon the re-



ceipt of such an order, it shall be the duty of said sheriff, to whom it is directed, to execute and return the same forthwith to the court by whom it was issued, and thereupon the said court shall cause proper examination to be made by medical experts, and if it shall satisfactorily appear that such convict is insane, said court shall order him to be confined in one of the insane asylums. The sheriff shall receive the same compensation as for transferring a prisoner to the state prison, and to be paid in the same manner. If any judge, after having been notified by the warden, shall neglect to cause such order to be made, as herein provided, or any such sheriff shall neglect to remove such insane convict, as required by the provisions of this section, it shall be the duty of the warden to cause such insane convict to be removed before a superior court of a county in which the state prison is located, in charge of an officer of the prison, or other suitable person, for the purpose of examination; and the cost of such removal shall be paid out of the state treasury, in the same manner as when removed by the sheriff, as herein provided.

Sec. 20. The state board of prison directors shall require of every able-bodied convict confined in a state prison as many hours of faithful labor in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the prison. Every convict who shall have no infraction of the rules and regulations of the prison or laws of the state recorded against him, and who performs in a faithful, orderly, and peaceable manner the duties assigned to him, shall be allowed from his term, instead and in lieu of the credits heretofore allowed by law, a deduction of two months in each of the first two years, four months in each of the next two years, and five months in each of the remaining years of said term, and pro rata for any

part of a year, where the sentence is for or more or less than a year. The mode of reckoning credits shall be as shown in the following table:

No. of years of Sentence.	Good Time Granted.	Total Good Time Made.	Time to be Served if Full Time is Made.
First year....	2 months	2 months.....	10 months
Second year..	2 months	4 months.....	1 year and 8 months
Third year....	4 months	8 months.....	2 years and 4 months
Fourth year..	4 months	1 year.....	3 years
Fifth year...	5 months	1 year and 5 months..	3 years and 7 months
Sixth year...	5 months	1 year and 10 months..	4 years and 2 months
Seventh year..	5 months	2 years and 3 months..	4 years and 9 months
Eighth year...	5 months	2 years and 8 months..	5 years and 4 months
Ninth year....	5 months	3 years and 1 month..	5 years and 11 months
Tenth year....	5 months	3 years and 6 months..	6 years and 5 months

And so on, through as many years as may be the term of the sentence. Each convict shall be held entitled to these deductions, unless the board of directors shall find that for misconduct or other cause he should not receive them. But if any convict shall commit any assault upon his keeper, or any foreman, officer, convict, or person, or otherwise endanger life, or shall be guilty of any flagrant disregard of the rules of the prison, or commit any misdemeanor, or in any manner violate any of the rules and regulations of the prison, he shall forfeit all deductions of time earned by him for good conduct before the commission of such offense, or that, under this section, he may earn in the future, or shall forfeit such part of such deductions as to the board of directors may seem just; such forfeiture, however, shall be made only by the board of directors after due proof of the offense and notice to the offender; nor shall any forfeiture be imposed when a party has violated any rule or rules without violence or evil intent, of which the directors shall be the sole judges. The board shall have power to restore credits forfeited, for such reasons as by them may seem proper.

Sec. 21. All criminals sentenced to the state prisons by the authority of the United States shall be received and kept according to the sentence of the court by which they were tried, and the prisoners so confined shall be subject in all respects and discipline and treatment as though committed under the laws of this state. The wardens are hereby authorized to charge and receive from the United States, for the use of the state, an amount sufficient for the support of each prisoner, the cost of all clothing that may be furnished, and one dollar per month for the use of the prisoner. No other or further charge shall be made by any officer for or on account of such prisoners.

Sec. 22. The board of directors shall have power to contract for the supply of gas and water for said (prisons), upon such terms as said board shall deem to be for the best interests of the state, or to manufacture gas, or furnish water themselves, at their option. They shall also have power to erect and construct, or cause to be erected and constructed, electrical apparatus or other illuminating works in their discretion, with or without contracting therefor, on such terms as they may deem just. The board shall have full power to erect any building or structure deemed necessary by them, or alter or improve the same, and to pay for the same from the fund appropriated for the use or support of the prisons, or from the earnings thereof, without advertising or contracting therefor; provided, that no building or structure, the cost of which will exceed five thousand dollars, shall be erected or constructed without first obtaining the consent of the governor, secretary, and treasurer of the state, or a majority thereof. The board shall have power to give for meritorious service to any convict discharged, or about to be discharged, a sum in addition to that already allowed not exceeding ten dollars.

Sec. 23. No officer or employee shall receive, directly or indirectly, any compensation for his services other than that prescribed by the directors; nor shall he receive any

compensation whatever, directly or indirectly, for any act or service which he may do or perform for or on behalf of any contractor, or agent, or employee of a contractor. For any violation of the provisions of this section, the officer, agent, or employee of the state shall be discharged from his office or service; and every contractor, or employee, or agent of a contractor engaged therein, shall be expelled from the prison grounds, and not again permitted within the same as a contractor, agent, or employee.

Sec. 24. No officer or employee of the state, or contractor, or employee of a contractor, shall, without permission of the board of directors, make any gift or present to a convict, or receive any from a convict, or have any barter or dealings with a prisoner. For every violation of the provisions of this section, the party engaged therein shall incur the same penalty as prescribed in section twenty-three.

Sec. 25. No officer or employee of the prison shall be interested, directly or indirectly, in any contract or purchase made or authorized to be made by any one for or on behalf [of] the prisons.

Sec. 26. There shall be printed annually for the use of the prisons five hundred copies of the annual report of the board of directors, and the clerk shall annually transmit to each of the state prisons in the United States one copy of such report.

Sec. 27. All the bonds of officers and employees under this act shall be deposited with the secretary of state.

Sec. 28. If any of the shops or buildings in which convicts are employed are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately, under the direction of the board of directors, by and with the advice and consent of the governor, attorney-general, and secretary of state, and the expenses thereof paid out of any funds in the state treasury not otherwise appropriated by law.

Sec. 29. The board of directors must report to the governor from time to time the names of any and all persons confined in the state prisons who, in their judgment, ought to be pardoned out and set at liberty on account of good conduct, or unusual term of sentence, or any other cause which in their opinion, should entitle the prisoner to pardon.

Sec. 30. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 31. This act shall take effect immediately.

The original of this act to regulate and govern the state prisons of California can be found in Statutes of 1880, p. 67 (Bancroft's ed., p. 243).

An act to provide for the erection and maintenance of a branch state prison near the town of Folsom.

[Approved March 30, 1874; 1873-4, 785. In effect immediately.]

(The code commissioners say of this act: Superseded by 1889, 404, ante.)

Section 1. The governor, lieutenant-governor, and secretary of state, the board of state prison directors, are hereby authorized and empowered, and it shall be their duty, to cause to be commenced, on or before the first day of October, A. D. eighteen hundred and seventy-four, the building of a branch state prison, on the land and at the site conveyed to the state by the Natoma Water and Mining Company, situated near the town of Folsom, in Sacramento County; also, to commence building and constructing an exterior wall, inclosing not less than five acres of land, around the same.

Sec. 2. The walls of the entire prison structure shall be erected with stone to be taken from the granite quarries situated on the land mentioned in section one of this act, using convict labor in and about the premises whenever it can be done to advantage; and the said prison structure shall be erected, finished, and completed as

speedily after it is commenced as practicable; provided, that said board of state prison directors shall first order the erection of a suitable structure for the accommodation of not less than one hundred and fifty convicts within the inclosed prison-yard, the same to be in harmony with the general plan adopted for the construction of the branch prison at Folsom.

Sec. 3. The said board of directors shall, on or before the fifteenth day of April, A. D. eighteen hundred and seventy-four, cause to be published in a daily newspaper in the city and county of Sacramento, and city and county of San Francisco, for at least thirty days, a notice to receive plans and specifications, in detail, at a place specified therein, for the construction of a branch state prison, to be erected on the land and at the site hereinbefore mentioned in said Sacramento County, and upon the basis of accommodating not less than five hundred prisoners at one time. The notice shall also state the premium, not to exceed the sum of five hundred dollars, to be awarded to the architect whose plans and specifications for the same may be adopted.

Sec. 4. The said board of state prison directors, on or before the fifteenth day of June, A. D. eighteen hundred and seventy-four, shall adopt plans and specifications for said branch state prison, as aforesaid; and on or before the day last before mentioned, shall cause to be advertised in a daily newspaper published in the city and county of Sacramento, and in the city and county of San Francisco, for at least thirty days, a notice to receive sealed proposals and bids to construct and erect any part of said branch state prison, on the land and at the site aforesaid, in accordance with the plans and specifications which shall have been heretofore adopted by said board of state prison directors for the construction of the same, with the reserved right to reject any and all bids as being too high in price, and advertise anew. The said board of directors, on or before the fifteenth day of September, A. D. eighteen

hundred and seventy-four, must let to the lowest responsible bidder the contract to construct and erect such part of said prison structure as said board of directors, in their discretion, may think proper, upon condition that such contractor or contractors execute a good and sufficient bond in double the amount of his or their bids, to perform such contract of constructing and erecting any part of said prison structure in a skillful and workmanlike manner, and in conformity with the plans and specifications aforesaid, which bond shall be approved by the board of state prison directors.

Sec. 5. The board of state prison directors are hereby authorized to appoint a superintendent of said prison, who shall hold his office during the pleasure of the appointing power, and until his successor is appointed and qualified, whose duty it shall be to superintend and manage the construction and erection of said prison structure, under such rules and regulations as may be prescribed by the board of state prison directors, under the provisions of this act.

Sec. 6. The board of state prison directors are hereby authorized to cause to be erected, on said site mentioned in section one of this act, such temporary prison buildings, yard and officers' quarters as they may deem necessary for the accommodation of the officers and guards, and the safe-keeping of the prisoners during the time they are employed in the erection of the said permanent prison buildings and wall, or prison structure.

Sec. 7. As soon as temporary quarters and buildings are erected, as provided in section six of this act, the board of state prison directors shall select a number of prisoners, not less than fifty nor more than five hundred, of the number who may be unemployed under contract, and cause them to be removed from the state prison at San Quentin to said prison near Folsom, and there to be confined and worked in the erection of said prison structure, and such other work and labor as the said board of directors shall deem advan-



tageous and proper, during the term or terms of their sentence to the state prison.

Sec. 8. The provisions of chapters one and two of title I, part III, of the Penal Code, are applicable to and made part hereof, substituting the words "branch state prison" for the words "state prison," whenever occurring in said chapters. The appointment of a prison warden shall be a permanent appointment, and he shall not be removed from office except for good and sufficient cause.

Sec. 9. All material necessary to be purchased in the construction of said prison structure, and all supplies for the support and maintenance of said branch state prison, shall be by contract, and the board of directors shall cause to be published, in a newspaper published in the county, a notice to receive bids therefor, and let the same to the lowest responsible bidder, whenever such material or supplies are needed.

Sec. 10. All salaries paid to officers, guards, or skilled laborers, and all moneys expended for material, tools, or supplies, used in the construction of said branch state prison buildings and wall, and in the support and maintenance of said prison, shall be drawn from the state treasury, in the same manner as moneys are now drawn therefrom for the support and maintenance of the state prison at San Quentin; and the board of directors shall cause to be kept a correct account, in detail, of all moneys secured and disbursed by them in the building, support and management of said branch state prison, and shall on or before the first day of November in each year, make a full report to the governor, showing in detail all the transactions connected with the construction, management, support and maintenance of said prison, and of the working and conducting of the convicts therein confined.

Sec. 11. The board of directors shall collect, or cause to be collected, and receive all moneys due for work and labor



furnished to any parties at or from said prison, or from the lease of the labor of convicts therein confined, and pay the same into the state treasury, and take the treasurer's receipt therefor; and it shall be the duty of the state treasurer to place the same in a fund, to be known as the "Folsom branch state prison fund," which, together with all moneys appropriated or obtained by the assessment and levy of taxes upon the value of property for the building, support and maintenance of said prison, shall be subject to orders of said board of directors, to be disbursed in the support of said branch state prison.

Sec. 12. The sum of one hundred and seventy-five thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the purpose of carrying out the provisions of this act, and the state treasurer is hereby directed and required to place the same in the Folsom branch state prison fund, subject to orders for disbursement as hereinbefore provided. Neither the board of state prison directors mentioned in section one of this act, nor any one acting under or for said board, shall incur or create any debt or debts, liability or liabilities, under the provisions of this act; nor shall they make any contract or agreement in relation to the building and construction of the branch state prison provided for in this act, the completion and fulfillment of which will exceed the appropriation made in this section, or the balance of such appropriation unexpended at the time such contract or agreement is entered into. Any violation of the foregoing provisions shall be a misdemeanor, and all such contracts and agreements shall be void.

Sec. 13. All acts and parts of acts, so far as the same are in conflict with the provisions of this act, are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its passage and approval.

In addition to the above legislation, the following acts may be referred to:

An act to provide for the completion of the branch state prison at Folsom, approved April 1, 1878; 1877-8, 884.

An act to provide for the speedy completion of the branch state prison at Folsom, approved April 12, 1880; 1880, 39 (Ban. ed. 191).

An act to provide for the erection of a wall at the state prison at Folsom, approved March 13, 1883; 1883, 295.

An act to appropriate the sum of thirty-four thousand four hundred and nineteen dollars and forty cents, to pay the amount found by the sixth judicial court to be due M. Miles and his sureties for work done under contract, in building the state prison at Folsom, approved March 10, 1885; 1885, 79.

An act providing for the erection and operation of rock-crushing plants at the state prisons, for the preparation of highway material for the benefit of the people of the state, and providing for the necessary advances and appropriation of money to carry out said work.

[Approved March 28, 1895. Stats. 1895, 274.]

Section 1. The governor of the state, the state prison directors, and the bureau of highways (or if the latter shall not be established, then and in that case the two first named) shall, when satisfied that fifty thousand cubic yards of prepared road or highway metal, as hereinafter described, will be taken for highway purposes, purchase, establish, and operate at one or both of the state prisons, a rock or stone crushing plant, to be operated by convict labor and by the application of power under control of the state prison directors, and with such free labor as is necessary for superintendence and direction, to crush rock or stone into road metal for highway purposes, of different and necessary degrees of fineness; provided, that the authority and direction hereby and herein conferred and given shall not be exercised or employed until the governor and the state prison

directors are satisfied that transportation can be had for such highway metal for highway purposes at just and reasonable rates, and so as to justify the setting up and operation herein provided for of said plant.

Sec. 2. When such plant described in section one is set up and operated there shall be taken into account in ascertaining the cost of producing highway metal therefrom, only the cost of necessary explosives, oil, fuel, tools, and machinery exclusive of the plant itself, repairs, superintendence, and direction, and the preparation and maintenance of beds, boxes, crates, or other unloading devices for carriage and delivery from cars of said highway metal.

Sec. 3. To said cost of production so ascertained, as set out in section two, there shall be added for and to each and every cubic yard of highway metal so produced, ten per cent, and the result or product of such addition shall be the sale price of such metal delivered from the plant free on board of the cars or other vehicles of transportation.

Sec. 4. Said ten per cent shall, as realized, and not less frequently than semi-annually, be paid into the state treasury, until there shall have been paid in the full sum of twenty-five thousand dollars, and thereafter said percentage shall be reduced to five per cent, and the same as realized shall be paid into the fund for the support of the state prisons.

Sec. 5. The state prison directors are hereby authorized to lease railroad cars with equipment suitable for the rapid and economical handling and delivery of highway material prepared as aforesaid, whenever in their judgment the interests of the people of the state will be conserved thereby in the matter of highway construction by the use of such highway metal so produced, as in this act provided. The cost of such leasing shall in such case be carried into the cost of production described in section two.

Sec. 6. The sum of thirty thousand dollars is hereby advanced by the state, for the purposes of this act, and said sum is hereby appropriated out of the general fund of the treasury, subject to the demand of the state prison directors; and the state controller shall, on presentation of such demand, in writing, draw his warrant upon the treasurer for the said sum of money in behalf of said state prison directors, and the state treasurer shall on presentation of such warrant, pay the same. Twenty-five thousand dollars of said sum of money so advanced and appropriated shall be returned to the fund from which drawn, as is specified and directed in this act.

Sec. 7. The sum of five thousand dollars is hereby set apart out of the money so appropriated in the previous section, to and for the usage of the state prison directors, to provide and maintain a permanent revolving fund for the purchase of tools, machinery, and other material and appliances, exclusive of the establishment of the plant described in this act, to be used in the process of crushing and handling rock or stone at the state prisons for the purpose contemplated and set out in this act. All money taken from said revolving fund shall be used exclusively in payment for such supplemental machinery, tools, material and appliances necessary to the proper quarrying, handling and preparing of highway material at said state prisons; and so much of the money received for sale of highway metal as shall be necessary to that end shall be returned to said revolving fund as is needed to keep the same constantly at the said figure of five thousand dollars.

Sec. 8. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its passage.

An act to regulate and govern the operation of the rock-crushing plant at the state prison at Folsom, to provide for the sale of crushed rock, and the disposition of the revenues derived therefrom.

[Approved March 11, 1897. Stats. 1897, 99.]

Section 1. The state board of prison directors shall regulate, govern, and have full control of the rock or stone crushing plant established at the state prison at Folsom, the product thereof, the revenues derived therefrom, and all appropriations of money therefor.

Sec. 2. The plant shall be operated by convict labor, and by the application of the mechanical and water power belonging to the state prison at Folsom, together with such free labor as the state board of prison directors may deem necessary for superintending, directing and guarding the convicts employed thereon.

Sec. 3. The state board of prison directors are hereby empowered and authorized to sell and to otherwise dispose of the crushed-rock product of the said plant; provided, that in all cases, preference shall be given to orders received from the bureau of highways for crushed rock for road metal for highway purposes.

Sec. 4. The sale price of all crushed rock sold for road metal for highway purposes shall be the cost of production, with ten per centum added, delivered on board cars or other vehicles of transportation at the rock-crushing plant; provided, that no rock shall be sold for highway or other purposes for a less price than thirty cents per ton.

Sec. 5. The cost of production shall be ascertained by estimating the cost of explosives, oil, fuel, tools, repairs, free labor, supplementary machinery, the preparation and maintenance of beds, boxes, crates, or other unloading devices for carriage to and delivery from cars, of said crushed

rock, the leasing of railroad cars, and the cost of such other materials, supplies and expenses as may be required and used in producing each ton of crushed rock ready for sale delivery.

Sec. 6. The state board of prison directors are hereby authorized to lease railroad cars, with equipments suitable for the rapid and economical handling and delivery of crushed rock, prepared as aforesaid, whenever in their judgment the interest of the people of the state will be conserved thereby, in the matter of highway construction, by the use of said crushed rock. The cost of said leasing shall be carried into the cost of production described in section five.

Sec. 7. The amount of five thousand dollars heretofore appropriated is hereby set apart to and for the usage of the state board of prison directors, to provide and maintain a permanent revolving fund for the purpose of operating and maintaining the rock-crushing plant at Folsom prison. The money taken from said revolving fund shall be used exclusively for operating and maintaining the said rock-crushing plant. So much of the money received from the sale of crushed rock as shall be necessary to that end, shall be returned to said revolving fund, as it is needed to keep the same constantly at the said figure of five thousand dollars.

Sec. 8. Whenever the revolving fund shall be replenished, and there shall be a surplus, or balance, over the amount appropriated, this surplus, or balance, shall be paid, not less frequently than semi-annually, into the state treasury, to the credit of the fund known as "The state prison fund of Folsom prison," for the use and support of Folsom prison.

Sec. 9. The clerk of the state prison at Folsom shall keep such records, books, and accounts as may be necessary to at all times clearly exhibit the financial business and other transactions of the said rock-crushing plant. All such records, books, and accounts shall be kept separate and distinct from those relating to other prison affairs.

Sec. 10. For all sums of money herein required to be

paid, drafts shall be drawn on the controller of state, signed by at least three members of the state board of prison directors. Said drafts shall be sent to the state board of examiners, to be by them approved, and after approval by said state board of examiners, the controller of state shall draw his warrant in behalf of said state board of prison directors, on the state treasurer, who shall pay the same, on presentation of such warrant; provided, that the state board of examiners is hereby expressly prohibited from approving of any of said drafts until the same are presented with itemized statement, showing specifically the services rendered, by whom performed, time employed, distance traveled, and necessary expenses thereof; if for articles purchased, the said statement shall give the name of each article, together with the price paid for each, and of whom purchased, together with the date of purchase.

Sec. 11. If any of the buildings, machinery, or structures appertaining to or comprising the said rock-crushing plant are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately, under the direction of the state board of prison directors, by and with the consent solely of the governor, the attorney-general, and the secretary of state, and the expenses thereof, not to exceed in amount the sum of ten thousand dollars, shall be paid out of any funds in the state treasury not otherwise appropriated by law, and the provisions of no other act shall apply to or govern or limit this section, or any of the powers or duties herein conferred.

Sec. 12. The state board of prison directors are hereby authorized and empowered to perform such other acts and duties as may be necessary to carry out the full intent and meaning of this act.

Sec. 13. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 14. This act shall take effect immediately.

An act to provide for certain improvements and repairs at the Folsom state prison, and making an appropriation therefor.

[Approved April 6, 1891. Stats. 1891, 487.]

The act appropriated \$65,000 for the purpose mentioned.

An act making appropriation for the purchase of an electric plant, pump and pipe, sewer pipe, necessary wheels for utilizing the water of the American River for power purposes, and the erection of a power building for the state prison at Folsom, and other expenses incidental and relating thereto.

[Approved March 11, 1889. Stats. 1889, 132.]

The act appropriated \$112,500.00 for the purpose mentioned.

An act to authorize and empower the state board of prison directors to purchase California-grown hemp, to be used in the manufacture of grain bags, and to fix the price at which such bags shall be sold.

[Approved March 16, 1901. Stats. 1901, 515.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. The state board of prison directors are authorized and empowered to purchase California-grown hemp, to be used in the manufacture of grain bags, and to pay for the same from the revolving fund created by law for the purchase of jute. The price for which grain bags made at said prison from hemp shall be sold shall be fixed by the state board of prison directors, in the same manner as the price of bags made from jute is now by law fixed by said board.

Sec. 2. This act shall take effect immediately.



An act making appropriations for the purchase of jute, jute machinery, lands, and erection of buildings for the manufacture of jute for the state prison at San Quentin, and other expenses incidental and relating thereto.

[Approved March 4, 1881; 1881, 34.]

The act appropriated \$219,000.00 for the purpose mentioned.

An act amending an act making appropriation for the establishment of a permanent fund for the purchase of jute to be manufactured at the state prison at San Quentin, approved March 9, 1885.

[Approved March 16, 1889. Stats. 1889, 228.]

The act appropriated \$100,000.00 for the purpose specified.

An act making appropriations for the purchase of additional jute machinery and the erection of additional buildings for the manufacture of jute goods for the state prison at San Quentin, and other expenses incidental and relating thereto.

[Approved March 24, 1887; 1887, 240.]

The act appropriated \$160,000.00 for the purpose specified.

An act to provide for the erection at Folsom state prison of a building, for the accommodation of the insane prisoners, and making an appropriation therefor.

[Approved March 26, 1903. Stats. 1903, 519.]

The act appropriated \$25,000.00 for the purpose indicated.

An act to provide for the erection at San Quentin state prison a building for the accommodation of the insane prisoners, and making an appropriation therefor.

[Approved March 19, 1889; 1889, 419. Repealed 1893, 148.]

The act appropriated \$20,000.00 for the purpose indicated.

An act to provide for certain improvements and repairs at the San Quentin state prison, and making an appropriation therefor.

[Approved March 19, 1889; 1889, 420. In effect immediately.]

The act appropriated \$15,000.00 for the purpose indicated.

An act to purchase adjacent lands at San Quentin for the use of the state prison, together with the improvements thereon, and making an appropriation therefor.

[Approved March 19, 1889. Stats. 1889, 419.]

The act appropriated \$7,500.00 for this purpose.

An act appropriating money for building workshops and prison buildings at the California state prison, at San Quentin.

[Approved March 31, 1876; 1875-6, 643. In effect immediately.]

This act appropriated two hundred thousand dollars for the construction of a large fire-proof work-shop, four hundred feet by sixty feet, and four stories high; also for the purchase of state machinery, shafting, water-pipes and hose. It provided that bids for sealed proposals to furnish the necessary materials should be published in two daily newspapers in San Francisco for at least ten days.

An act to appropriate the sum of three thousand one hundred dollars to purchase adjacent lands at San Quentin for the use of the state prison, together with the improvements thereon.

[Approved March 31, 1891. Stats. 1891, p. 261.]

An act directing the state prison directors of the state of California to employ at least twenty prisoners in the construction of roads to the state prisons at San Quentin and at Folsom.

[Approved March 12, 1903. Stats. 1903, 127.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. The state prison directors of the state of California are hereby authorized and directed to employ at least twenty prisoners daily during fair weather, in the construction and repair of such public roads as have been or shall hereafter be laid out or opened by the board of supervisors of Marin County, and which extend from San Quentin state prison, or the grounds surrounding the same, to Point Tiburon, San Rafael, and all railroad stations in Marin County which lie in the neighborhood of the said state prison; providing, that no work shall be done by such prisoners beyond a point six miles distant from said prison buildings, and also to employ at least twenty prisoners under like conditions on roads extending from the state prison at Folsom in Sacramento County or connecting therewith; providing, that no work shall be done by such prisoners beyond a point six miles distant from said prison building.

Sec. 2. This act shall take effect and be in force from and after its passage.

Acts similar in terms to this were passed in 1893; Stats. 1893, p. 141. And 1897; Stats. 1897, p. 6. And 1891; Stats. 1891, p. 222.

An act to protect the public health, to prevent the introduction and spreading of disease, and to provide for the protection of the health of criminals under sentence on conviction of a misdemeanor.

[Approved March 13, 1883. Stats. 1883, 280.]

Section 1. Whenever the board of health of any city or county, or city and county, or the board of supervisors of

any county, or the county physician of any county of this state, shall present or cause to be presented to the sheriff, or other officer having charge of any county jail or prison in any county or city, or city and county, in this state, a certificate, or order, in writing, to the effect that it is by them, or him, considered necessary for the purpose of protecting the public health, or to prevent the introduction or spreading of disease, or to protect or improve the health of criminals under sentence, that the hair of any criminal or criminals should be cut, the said sheriff, or other officer, shall cut, or cause to be cut, the hair of any such person or persons in his charge convicted of a misdemeanor and sentenced to a longer term of imprisonment than fifteen days, to a uniform length of one and one-half inches from the scalp of such person or persons so imprisoned.

Sec. 2. This act shall take effect from and after its passage.

An act concerning the payment of the expenses and costs of the trial of convicts for crimes committed in the state prison, and to pay the costs of the trial of escaped convicts, and to pay for the expenses of coroner inquests in said prison.

[Approved April 12, 1880. Stats. 1880, 43.]

See this act, ante, p. 588.

An act to authorize the state board of prison directors to pay for certain skilled labor used in the construction of the dam and canal at Folsom prison, and making an appropriation therefor.

[Approved April 6, 1891. Stats. 1891, 496.]

The act appropriated \$16,925.00 for the purpose indicated.

An act to establish board of parole commissioners for the parole of and government of paroled prisoners.

[Approved March 29, 1893; 1893, 183. Amended 1901, 82.]

Section 1. The state board of prison directors of this state shall have power to establish rules and regulations under which any prisoner who is now or hereafter may be imprisoned in any state prison, and who may have served one calendar year of the term for which he was convicted, and who has not previously been convicted of a felony and served a term in a penal institution, may be allowed to go upon parole outside of the buildings and inclosures, but to remain while on parole in the legal custody and under the control of the state board of prison directors, and subject at any time to be taken back within the inclosures of said prison; and full power to make and enforce such rules and regulations and retake and imprison any convict so upon parole is hereby conferred upon said board of directors, whose written order certified by the president of said board shall be sufficient warrant for all officers named therein to authorize such officer to return to actual custody any conditionally released or paroled prisoner, and it is hereby made the duty of all chiefs of police, marshals of cities and villages, and sheriffs of counties, and all police, prison, and peace officers and constables to execute any such order in like manner as ordinary criminal process; provided, however, that no prisoner imprisoned under a sentence for life shall be paroled until he shall have served at least seven calendar years.

The governor of the state shall have like power to cancel and revoke the parole of any prisoner, and his written authority shall likewise be sufficient to authorize any of the officers named therein to retake and return said prisoner to the state prison, and his written order canceling or revoking the parole shall have the same force and effect and be executed in like manner as the order of the state board of

prison directors. If any prisoner so paroled shall leave the state without permission from said board he shall be held as an escaped prisoner and arrested as such. [Amendment, approved February 28, 1901. Stats. 1901, 82.]

Sec. 2. This act shall take effect immediately from and after its passage. [Amendment, approved February 28, 1901. Stats. 1901, 82.]

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### SUNDAYS.

An act to provide for a day of rest from labor.

[Approved February 27, 1893. Stats. 1893, p. 54.]

Section 1. Every person employed in any occupation of labor shall be entitled to one day's rest therefrom in seven, and it shall be unlawful for any employer of labor to cause his employees, or any of them, to work more than six days in seven; provided, however, that the provisions of this section shall not apply to any case of emergency.

Sec. 2. For the purposes of this act, the term day's rest shall mean and apply to all cases, whether the employee is engaged by the day, week, month, or year, and whether the work performed is done in the day or night time.

Sec. 3. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor.

Sec. 4. This act shall take effect and be in force thirty days from and after its passage.

An act to regulate and provide for a day of rest in certain cases.

[In effect April 16, 1880. Stats. 1880, p. 80, Ban. ed. 311.]

Section 1.<sup>b</sup> It shall be unlawful for any person engaged in the business of baking to engage, or permit others in his employ to engage in the labor of baking, for the purpose of sale, between the hours of six o'clock P. M. on Saturday and six o'clock P. M. on Sunday, except in the setting of

sponge preparatory to the night's work; provided, however, that restaurants, hotels, and boarding houses may do such baking as is necessary for their own consumption.

Sec. 2. Any person violating the provisions of this act shall be guilty of a misdemeanor, and shall be punishable by imprisonment in the county jail not less than one month nor more than six months, or by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by both fine and imprisonment.

This act was declared unconstitutional: *Ex parte Westerfield*, 55 Cal. 550.

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### SUPERVISORS.

An act to authorize boards of supervisors to pay the expenses of posse comitatus in criminal cases.

[Approved April 16, 1880; 1880, 102, Ban. ed. 341.]

Section 1. The board of supervisors of any county may allow, in their discretion, such compensation as they may deem just, to defray the necessary expenses that have been incurred by a posse comitatus in criminal cases; provided, no claim shall be allowed for expenses which have not been incurred within one year before such allowance.

Sec. 2. This act shall take effect and be in force from and after its passage.





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